## United States Court of Appeals for the Second Circuit



## APPELLANT'S APPENDIX

# 74-1778

In The

#### United States Court of Appeals

For The Second Circuit

CORWIN CONSULTANTS, INC.,

Appellant,

vs.

UNITED STATES OF AMERICA.

Appellee,

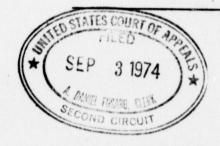
and

SAMUEL A. CULBERTSON, II,

Appellee-Appellant.

On Appeal from the United States District Court for the Southern District of New York.

#### APPELLANTS' APPENDIX



BENEDICT GINSBERG

Attorney for Appellant

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#### DOCKET ENTRIES

CORWIN CONSULTANTS, INC.

vs.

THE INTERPUBLIC GROUP OF COMPANIES, INC. ETC.

DATE	PROCEEDINGS
May 3-73	Filed petition for Removal from Supreme Court State & County of N.Y.
May 21-73	Filed stip and order that the time for the respondent' Interpublic Group of Companies Inc. to answer the Petition is extended, <u>nunc pro tunc</u> , as of May 10, 1973 to and including the 15th day of June 1973. So Ordered Lasker J.
June 20-73	Filed stip and order that the time for the respondent to answer the petition is hereby extended to 7/15/73, So ordered Lasker J.
June 29-73	Filed respondent's Samuel A. Culbertson II affidavit by Ethel Rosenthal
June 27-73	Filed respondent's Samuel A. Culbertson II ANSWER to the petition & Counterclaim.
July 12-73	Filed stip and order extending time to answer until July 27, 73. SO ORDERED. LASKER, J. (Interpublic Group of Co.
July 12-73	Filed stip and order extending time to answer cross claim until Aug. 24,73, for deft. Interpublic Group. SO ORDERED. LASKER, J.
Aug. 1-73	Filed stip & order extending time for

	respondent Interpublic Group to answer to 8-3-73Lasker, J.
Aug. 6-73	Filed stip. & order extending time of respondent interpublic Group to answer to 8-31-73 Lasker, J.
Sep. 5-73	Filed stip and order extending time to respond to cross-claim until Sep.14-73. LASKER, J.
Sep. 5-73	Filed stip and order extending time to respond to the petition for Interpublic Group until Sep. 14-73. LASKER, J.
Sep. 4-73	Filed stip and order extending Interpublic Group time to answer cross-claim until Aug. 31-73 LASKER, J.
Sep. 14-73	Filed stip and order extending time for interpublic Group to answer until Oct. 5-73. LASKER, J.
Sep. 14-73	Filed stip and order extending time for interpublic to answer cross claim until Oct. 5-73. LASKER, J.
Oct. 2-73	Filed ANSWER and counterclaim and cross claim by deft. Cowles Communications.
Oct. 3-73	Filed stip and order adding COWLES COM- MUNICATIONS. Inc. LASKER, J.
Oct. 9-73	Filed petitioner's reply to answer of respondent Cowles Communication.
Oct. 9-73	Filed stip. & order extending time for respondent interpublic to answer cross-claim to 10-19-73-Lasker, J.

Oct. 9-73	Filed stip. & order extending time for respondent interpublic to answer petition to 10-19-73-Lasker, J.
Oct. 15-73	Filed Samuel A. Culbertson reply to counter claim and cross-claim.
Oct. 23-73	Filed ANSWER Of Interpublic Group of Companies to cross-claim of respondent Cowles Communications, Inc.
Oct. 23-73	Filed ANSWER of Interpublic to cross-claim of Culbertson
Nov. 19-73	Filed ANSWER of USA to cross claim by petition Cowles Communications, inc.
Nov. 19-73	Filed ANSWER of USA to cross-claim of Samuel A. Culbertson, II
Nov. 19-73	Filed ANSWER, counterclaim & cross claim of USA
Nov. 26-73	Filed pitffs affdvt & notice of motion for summary judgment. Ret. 12-5-73.
Nov. 26-73	Filed memo of law in support of motion, by pltff.
Nov. 26-73	Filed pltffs supplemental affdvt in support of motion.
Nov. 26-73	Filed pltffs supplemental memo of law in support of motion.
Nov. 26-73	Filed pltffs answer to counter-claim & cross-claim by U.S.A.
Nov. 30-73	Filed respondent Interpublic's ANSWER to cross-claim.

Dec. 5-73	Filed stip & order adjourning petitioner's motion to 12-19-73-Lasker, J.
Dec. 11-73	Filed respondent's (USA) notice of motion and statement re: Rule 9(g)for summery judgment-ret. 12-19-73.
Dec. 11-73	Filed respondent's (USA) memorandum of law in support of motion for summary judgt.
Dec. 18-73	Filed deft Cowles Communications affdvt in opposition to motion for summary judgment.
Dec. 19-73	Filed pltffs affdvt in opposition to motion.
Dec. 19-73	Filed pltffs memo of law in support of motion.
Dec. 19-73	Filed defts. Samuel A. Culbert affdvt. in opposition to motion for summary judgment.
Dec. 19-73	Filed deft interpublic Group affdvt in support of interpublic's Group application for award of atty's fees.
Jan. 18-74	Filed deft. U.S.A. reply affdvt. to papers submitted by other parties opposing its motion, for judgment.
Apr. 16-74	Filed memorandum OPINION #40,598The IRS' motion for summary judgment is, granted. Corwin's and Cowles' motions for summary judgment are deniedSubmit order-Lasker, J.
May 13-74 <sup>°</sup>	Filed Judgment & order that respondent interpublic shall pay all installments as indicated within this judgment & order, and that said respondent shall pay all the installments described to the order of the Treasurer of the U.S. at the office

of the US Attorney for the So. Dist. of NY at the expiration of 10 days of the entry of the order & judgment, and each future installment that shall become due to the USA shall be paid in a like manner within 2 days of the date on which it becomes due-that if after the completion of payments described, there shall still remains any amounts payable to Harperthen respondent interpublic shall pay the parties such amounts as may fall due to Harper in the order of priority indicated-Lasker, J.--Judgment entered--Clerkmailed notice. ent. May 15-74

- May 16-74 Filed respondent notice of entry.
- May 29-74

  Filed notice of appeal by the respondent Samuel A. Culbertson, II, from an order in this action on May 13, as determines that the respondent U.S.A. has lien prior to the respondent Samuel A. Culbertson, II.
- May 31, 74

  Filed Notice of Appeal by Benedict Ginsberg,
  Atty for petitioner, from order of Judge
  Lasker filed May 13,74. Mailed copies to
  U.S. Atty, Maas, Levy, Friedman, Hirsch
  & Stern, Esq., Chapman & Burke, Goodhue
  & Lane, Esqs.
- June 6-74 Filed Reply Aff. of pet. in support of motion for S.J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

oral argument.

73 Civ. 1978 MEL

Petitioner.

-against-

NOTICE OF MOTION

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON II, and COWLES COMMUNICATIONS, INC.,

Respondents.

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Charles E. Ramos, sworn to the 16th day of November, 1973, and the exhibits annexed thereto, and upon all the prior pleadings and proceedings heretofore had herein, the undersigned will move this Court on the 5th day of pleacewha, 1973, at 10 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, in Room 2903, United States Courthouse, Foley Square, New York, New York, for an order granting the petitioner summary judgment as prayed for in the petition, and for such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any, shall be served upon the undersigned at least five (5)

days before the return date of this motion.

Dated: New York, N. Y. November 16, 1973.

Yours, etc.

by Charles E. Remos

TO:
PAUL, WEISS, RIFKIN,
WHARTON & GARRISON, ESQS.
Attorneys for Respondent
The Interpublic Group of
Companies, Inc.
345 Park Avenue
New York, N. Y. 10022

BENEDICT GINSBERG Attorney for Petitioner 475 Fifth Avenue New York, N. Y. 10017 MU 3-7079

MEL P. BARKAN, ESQ.
Assistant United States Attorney
Attorney for the Respondent
The United States of America
United States Courthouse
Foley Square, New York, N. Y. 10007

MAASS, LEVY, FRIEDMAN, HIRSCH & STERN, ESQS. Attorneys for Respondent Samuel A. Culbertson II 100 Park Avenue New York, N. Y. 10017

CHAPMAN & BURKE, ESQS.
Attorneys for Respondent
Cowles Communications, Inc.
420 Lexington Avenue
New York, N. Y. 10017

GOODHUE & LANE, ESQS.
Attorneys for Respondent Peter M. Moffitt
61 Smith Avenue
Mt. Kisco, New York 10549

GOODHUE & LANE, ESQS.
Attorneys for Respondent W. Denning Harvey
61 Smith Avenue
Mt. Kisco, New York 10549

### AFFIDAVIT OF CHARLES E. RAMOS IN SUPPORT OF MOTION Dated November 16, 1973

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

73 Civ. 1978 MEL

Petitioner,

-against-

AFFIDAVIT

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON II, and COWLES COMMUNICATIONS, INC.,

Respondents.

STATE OF NEW YORK ) SS:

CHARLES E. RAMOS, being duly sworn, deposes and says:

That I am an attorney-at-law associated with BENEDICT GINSBERG, the attorney for the petitioner herein, and submit this affidavit in support of a motion for an order granting the petitioner summary judgment as prayed for in the petition.

#### Nature of the Dispute

This action was instituted by the petitioner pursuant to CPLR 5239, to determine conflicting claims of lien priority among various creditors of one Marion Harper, Jr. (hereinafter referred to as "Harper", or the "judgment creditor") to a fund in the possession of the respondent

The Interpublic Group of Companies, Inc. (hereainfter referred to as "Interpublic"). Interpublic is bound, by contract, to pay Harper the sum of \$100,000 per year in monthly installments, for a stated period of eight years, which has not yet expired.

The fund was established pursuant to the order of the Hon. Samuel R. Rosenberg, a Justice of the Supreme Court of the State of New York. A copy of the petitioner's judgment against Harper is annexed hereto as Exhibit A. A copy of Judge Rosenberg's decision is Exhibit B. The fund represents seven monthly payments which had accrued between February 1972 and October 1972 under the contract between Interpublic and Harper, a copy of which is annexed hereto as Exhibit C hereof.

The fund is on deposit in a special account established by Judge Rosenberg's order for the benefit of the petitioner, sufficient in amount to satisfy petitioner's judgment, with interest. Judge Rosenberg directed that the account be opened and maintained by Interpublic, subject to the determination to be made in this action regarding lien priority.

The petitioner had obtained a judgment against Harper in the Supreme Court, New York County, in the action hereinafter described, in the sum of \$56,346. The attorneys for the petitioner and for the respondent Interpublic acreed.

Affidavit of Charles E. Ramos in Support of Motion to a deposit of \$60,000. in satisfaction of said judgment.

A copy of said agreement is annexed hereto as Exhibit D.

The parties also provided in the judgment settled

before Justice Rosenberg (Exhibit A) that the respondent

United States of America (hereinafter referred to as "U.S.A.")

and other judgment creditors of Harper be joined in one action to determine priority of liens to the fund.

The respondent U.S.A. transferred this action to the United States District Court.

#### Status of the Case

To date, the following pleadings have been had in this action:

- Notice of Removal, containing the petition,
   exhibits annexed to the petition, and the affidavit in support of the petition (Exhibit E).
- The answer of the respondent Samuel A.
   Culbertson II (Exhibit F).
- 3. The answer and counterclaim of the respondent Cowles (Exhibit C).
- 4. The reply of the petitioner to the counterclaim of the respondent Cowles (Exhibit H).
- 5. The answer and replies to cross-claims of the respondent Interpublic (Exhibits I, J and K).
- 6. The reply of the respondent Samuel A. Culbertson II (Exhibit L).

Affidavit of Charles E. Ramos in Support of Motion 8a
The respondents Peter M. Moffitt (hereinafter referred to as "Moffitt") and W. Denning Harvey (hereinafter
referred to as "Harvey") have wilfully defaulted by reason
of the fact that they have been paid in full and make no
claim to this fund. A copy of this affidavit is being served
by mail upon the attorneys for Moffitt and Harvey in order
to give them an opportunity to contradict, if they so wish,
any statement made regarding their clients.

The respondent U.S.A. has wilfully defaulted, its answer being due five months ago, and its time to answer not having been extended by agreement or otherwise. The defendant Culbertson did not submit its answer in timely fashion.

The petitioner takes the position that it is entitled to judgment against all respondents, on the merits.

#### Facts

On May 23, 1972 judgment on behalf of the petitioner against Harper was entered and docketed in an action instituted in the Supreme Court New York County, entitled "Corwin Consultants, Inc. against Marion Harper, Jr.", Index No. 15276/1970, in the sum of \$52,346. Said judgment remains wholly unpaid.

10 3, 7

On October 4, 1972, an execution was issued on that judgment, and was duly served, by the Sheriff of New York County, upon the respondent Interpublic. It is upon

Affidavit of Charles E. Ramos in Support of Motion that execution, that petitioner claims it is entitled to lien priority to the fund held by the respondent Interpublic in the special bank account.

The respondents' positions are as follows:

The respondent Interpublic is a mere stakeholder as regards the seven monthly payments presently on deposit in the Court-ordered special bank account.

The respondents Moffitt and Harvey have been paid in full.

against Harper, which action resulted in a judgment in the sum of \$608,180.90 (see page 2 of the answer of respondent Culbertson, Exhibit F hereof), which judgment was not entered and docketed until November 30, 1972. On February 7, 1973 said claim became a lien by reason of execution by the Sheriff of New York County upon the respondent Interpublic. It is the petitioner's claim that this execution on behalf of respondent Culbertson is subordinate and subject to petitioner's lien by reason of the fact that the petitioner's execution was served on October 4, 1972, some four months prior to the execution served on behalf of respondent Culbertson.

The respondent U.S.A. is in willful default. Not-

Affidavit of Charles E. Ramos in Support of Motion withstanding the fact that the petitioner is entitled to judgment against the U.S.A. by reason of its five-month default in answering, the petitioner is again clearly entitled to lien priority on the merits. The lien of the respondent U.S.A. is basel upon a levy served October 18, 1972, and a final demand dated October 30, 1972, copies of which are annexed hereto as Exhibits M and N.

The levy and final demand, both served and filed subsequent to petitioner's execution, are subordinate to petitioner's lien.

The respondent Cowles presents the most interesting factual situation, but nevertheless is also subordinate to the rights of the petitioner. The respondent Cowles obtained in rem jurisdiction pursuant to an order of attachment in an action entitled "Cowles Communications, Inc. v. Marion Harper Associates and Marion Harper, Jr.", Supreme Court, New York County, Index No. 2678/1972 (see page 2 of answer of respondent Cowles (Exhibit H)), and obtained a judgment against Harper by default.

Ordinarily a judgment entered pursuant to an attachment would have a priority lien date as of the service of the notice of attachment upon the garnishee in possession of property of the judgment debtor. However, such is not the case here.

Affidavit of Charles E. Ramos in Support of Motion
First, contrary to the assertions contained in the
answer of respondent Cowles, no order of attachment was ever
served on behalf of the respondent Cowles upon the Interpublic
Group of Companies, Inc. Rather, the respondent Cowles
caused the Sheriff of New York County to serve McCann-Erickson,
Inc., a wholly-owned subsidiary of respondent Interpublic,
and the law firm of Debevoise, Plimpton, Lyons & Gates.
Since the fund in question was not in possession of McCannErickson or Debevoise, Plimpton, Lyons & Gates, the attachment
should by that reason alone fail.

However, there is another reason why the respondent Cowles has no lien priority whatsoever with regard to the fund. When McCann-Erickson and Debevoise Plimpton, Lyons & Gates were served with the order of attachment, they failed to turn over to the Sheriff whatever property of the judgment debtor they had in their possession.

The respondent Cowles failed to enforce its order of attachment, and pursuant to CPLR 6214(e), said attachment lapsed.

#### Summary

It is clear from the foregoing that three of the above-named respondents (Interpublic, Moffitt and Harvey) make no claim to the fund which is the subject matter of this action. Of the remaining respondents, two of them

Affidavit of Charles E. Ramos in Support of Motion 12a (U.S.A. and Culbertson) perfected their lines subsequent to the perfection of the petitioner's lien, and the last respondent (Cowles) allowed its levy of attachment to lapse by reason of its failure to enforce same.

Wherefore, in view of the foregoing, it is respectfully requested that the within motion be granted, and judgment entered in favor of the petitioner Corwin Consultants,
Inc.

Sworn to before me this

16th day of November, 1973.

CHARLES E. RAMOS

ROSE MAMLOUK
Notary Public, State of New York
No. 31-7688429
Qualified in New York County
Commission Expires March 30, 1974

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the Cour of New York, at the Courthouse, 60 Centre Street, in the City, State and County of New York, on the 16th day of May, 1973.

PRESENT:

HON: SAMUEL R. ROSENBERG,

Justice.

CORWIN CONSULTANTS, INC.,

Petitioner,

JUDGMENT

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC.,

Index No. 25532/72

Respondent.

The petitioner, having brought this proceeding pursuant to section 5227 of the Civil Practice Law and Rules to require the respondent to pay to the petitioner the sum of \$52,346.00, together with interest from May 23, 1972, being the amount of part of a debt due from respondent to Marion Harper, Jr., a third person against whom petitioner received a judgment, on the 23rd day of May, 1972, in the amount of \$52,346.00, no part of which judgment is as yet paid or satisfied, and the respondent having moved for an order dismissing the petition pursuant to section 404 of the Civil Practice Law and Rules upon the ground that the petitioner has failed to give notice to the judgment-debtor in the manner provided in section 5227

of the Civil Practice Law and Rules or, in the alternative, for an order directing petitioner to give notice of this proceeding to the judgment-debtor in the manner provided in section 5227 of the Civil Practice Law and Rules, and the petition and the motion having duly come on to be heard before Mr. Justice Rosenberg, without a jury at a Special Term, Part I of this Court on the 9th day of March, 1973, and the petitioner herein having duly appeared by Benedict Ginsberg, its attorney, and the respondent having duly appeared by Paul, Weiss, Rifkind, Wharton & Garrison, its attorneys

NOW, on reading and filing the notice of petition dated November 27, 1972, the petition of Corwin Consultants, Inc., dated the 17th day of November, 1972, and the affidavit of Benedict Ginsberg, sworn to the 30th day of November, 1972, with exhibits annexed thereto, with due proof of service thereof, the affidavit of Charles E. Ramos, sworn, to the 21st day of February, 1973, and the affidavit of Sophie Zarit, sworn to the 13th day of February, 1973, all submitted in support of the petition and in opposition to the motion, and the notice of motion dated February 9, 1973, the affidavit of Edward N. Costikyan, sworn to the 9th day of February, 1973, with exhibits annexed thereto, with due proof of service thereof, and the reply affidavit of Edward N. Costikyan, sworn to the 22nd day of February, 1973, all read in opposition to the petition and in support of the motion, and due deliberation having been had, and the Court having filed a written decision

Exhibit A - Order of Rosenberg, J.

directing the entry of judgment as hereinafter provided, without costs to either party,

NOW, on motion of BENEDICT GINSDERG, ESQ., attorney for the petitioner, it is

ORDERED AND ADJUDGED, that the petition be and the same hereby is entertained, that judgment be and the same hereby is awarded to the petitioner, and that the motion to dismiss be and the same hereby is denied, and it is further

ORDERED AND ADJUDGED, that within 30 days from the entry of this judgment, the petitioner shall institute a proceeding pursuant to section 5239 of the Civil Practice Law and Rules for determination of priority of liens on the property of Marion Harper, Jr., naming as respondents therein the United States of America, and those judgment creditors of Marion Harper, Jr. of which the respondent herein shall give written notice to the petitioner on or before the 15th day after the entry of this judgment, such proceeding to be on notice to Marion Harper, Jr., by certified mail at the addresses listed in the aforementioned affidavit of Sophie Zarit, and it is further

d.

ORDERED AND ADJUDGED, that the respondent set aside in a special account for the benefit of the petitioner all sums falling are to the debtor, until such deposits will satisfy petitioner's judgment, together with interest, and it is further

Exhibit A - Order of Rosenberg, J. 168
ORDERED AND ADJUDGED, that the petitioner be given
written notice of the creation of the account, where it is
maintained, and of each deposit made therein and the time
thereof, and it is further

ORDERED AND ADJUDGED, that upon determination of the special proceeding, either petitioner may move for relief at the foot of the judgment which will implement that decision and the judgment now to be entered, or the respondent may likewise move in the event that the judgment-debtor does violate the restrictive covenant, and it is further

ORDERED AND ADJUDGED, that upon payment by The
Interpublic Group of Companies, Inc. in the manner as aforementioned, The Interpublic Group of Companies, Inc. be and
it hereby is discharged from any liability to Corwin Consultants,
Inc. and to all parties to the aforementioned CPLR section 5239
proceeding and to Marion Harper, Jr. upon its indebtedness to
him up to the amount of the payment above mentioned, and it is
further

ORDERED AND ADJUDGED, that no costs be awarded to either party.

S. R. R.

J. S. C.

Judgment entered June 5, 1973. Norman Goodman, Clerk.

Roserberg J.

CORWIN CONSULTANTS, INC. y
THE INTERPUBLIC GROUP OF
COMPANIES, INC.—This is an application pursuant to CPIR, Section 5227,
for judgment pagning respondent to
pay to petitioner the sum of 252,346,
together with interest from May 22,
1972, in satisfaction of the judgment
held by the petitioner against its judgment debtor. Respondent cross-moves
for an order dismissing the petition
pursuant to CPIR, Section 404, upon
the ground petitioner has failed to give
motice to the judgment debtor, or, in
the alternative, for an order directing
petitioner to give notice of this proceding to the judgment debtor as
provided in CPIR, Section 5227.

Restraining orders had been previously served on respondent by two
other judgment creditors; however,
they have been withdrawn. Nevertheless respondent urges the Internal
Revenue Service has during the past
two years served notices on six occasions in respect of tax delinquencies,
which far exceed petitioner's judgment
or respondent's indebtedness to the
judgment debtor. It is not stated that
such tax claims have been duly filed.
Furthermore, it is urged that at the
time of motion no notice was given to
the judgment debtor. It is conceded,
however, that neither petitioner nor
the judgment debtor. It is conceded,
however, that neither petitioner nor
the judgment debtor. It is conceded,
however, that neither petitioner nor
the judgment debtor of the debtor
and from the information furnished
it appears that any notice however
given is not likely to reach his notice,
a circumstance which, of course, cannot be permitted to obstruct relief.
Finally, respondent urges its indebtedness accrues annually and grows out
of an agreement conditioned on the
debtor's covenant that he will not
reveal respondent's trade secreta.
Violation of the covenant is not urged.
CPIR, Section 5227 provides:
"Notice of the proceeding shall also
be served upon the judgment debtor
in the same manner as a summons or
by resistered or certified mail, return
recipt requested. The court may permit any a

5239."

In respect of service upon a natural person, CPLR, Section 308 (5) provides that such service shall be made "in such manner as the court, upon motion without notice, directs, if service is impracticable under paragraphs one, two and four of this section."

As to proceedings to determine adverse claims, CPLR, Section 5239 provides:

As to proceedings to determine 5239 provides:

"Prior to the application of property or debt by a Sheriff or receiver to the satisfaction of judgment, any interested person may commence a special proceeding against the judgment creditor or other person with whom a dispute exists to determine rights.

in the property or debt, by serving a notice of petition upon the respondent, the Sheriff or receiver and such other person as the court directs, in the same manner as a notice of motion.

\* \* The court may permit any interested person to intervene in the proceeding."

In Bobkin v. Chapman, 21 N. Y. 2d 490, the court stated:

"It is quite clear that the draftsmen of Section 308 deemed it not at all unlikely that the method of service directed under its paragraph four [now 308 (5)] would casually result in failure to bring actual notice to a defendant. \* \* \* \* Undeniably, there are situations in which insistence on actual notice, or even on the highest probability of actual notice would be both unfair to plaintiffs and harmful to the public interest."

In the circumstances here, relief may not be denied to petitioner in the exercise of reasonable discretion. Yet, such relief must be fashioued to give adequate protection to respondent, both as to what appears unlikely cessation of obligation by reason of the debtor's future breach of covenant and as to possible priority of other judgment creditors or claimants, particularly the Internal Revenue Service.

Accordingly, the petition is entertained and the cross-motion is denied, Judgment is awarded to petitioner. It shall give notice of the proposed order, and judgment to be settled to the judgment debtor in the same manner in which notice of this proceeding was finally and timely given to the debtor. The judgment shall require that within libirty days from publication hereof, petitioner institute a proceeding purguent to CPLR, Section 5239 on notice to the Internal Revenue Service for defermination of priority (Johnson Service Co. v. H. S. Kaiser Co., 234 P. Supp. 745), that in the meantime respondent set aside in a special account for the benefit of petitioner institute a proceeding purguent all sums falling due to the debtor until such deposits will satisfy petitioner institute a proceeding business of the proceeding of the petitioner may move for relief at the f

\*

The Interpublic Group of Companies, Inc.

February 1, 1968

Mr. Marion Harper, Jr. Ridge Acres, Langdon Avenue Irvington, New York

Dear Mr. Harper:

This will confirm the agreement between this corporation (the "Company") and you ("Harper") as follows:

- 1. Severance of Connections. Effective from the date hereof, Harper will no longer be a director, officer or employee of the Company or any of its subsidiaries.
- 2. Stock and Indebtedness. As at January 31, 1968, Harper was indebted to the Company in the amount of \$730,279.51. Of such total amount, \$219,321.93 is payable by Harper to the Company under three agreements dated February 2, 1965, as amended, as the purchase price for an aggregate of 10,001 shares of Class "B" Stock of the Company. In addition to said 10,001 shares Harper owns or has an interest in 109,325 shares of such Class "B" Stock, of which 49,663 shares are pledged to secure a loan to Harper by Bankers Trust Company of \$862,500 and 49,663 shares are pledged to secure a similar loan to Harper by Franklin National Bank of \$862,500 and of which 3,333 shares are pledged to secure a loan of \$70,534 to Harper by Chemical Bank New York Trust Company. The remaining

EXHIBITE

6,666 shares are pledged with the Company to secure Harper's indebtedness to it. Under the provisions of the Company's Certificate of Incorporation and By-Laws, the Company is obligated to buy, at book value determined as provided in said By-Laws, shares of Class "B" Stock held by any person in the employ of the Company upon the termination of his employment, however it may occur. It is agreed that

- (a) Harper's obligation to purchase

  10,001 shares of Class "B" Stock from the Company
  for \$219,321.93 is released, and the Company has
  no further obligation to Harper with respect to
  such shares, and the agreements dated Pebruary 2,
  1965, as amended, between Harper and the Company
  with respect to such shares are hereby terminated
  and cancelled.
- (b) Harper transfers and surrenders to the Company all of his right, title and interest in all other shares of Class "B" Stock of the Company owned or held by him, including without limitation the shares pledged to secure the aforesaid loans by Bankers Trust Company, Franklin National Bank and Chemical Bank New York Trust Company and the shares pledged to

the Company, for \$2,295,825, to be paid in the manner provided below.

3.

- (c) The Company will pay the amount of \$1,795,534 by assuming the above mentioned obligations of Harper of \$862,500 to Bankers Trust Company, \$862,500 to Franklin National Bank and \$70,534 to Chemical Bank New York Trust Company, the payment or performance of which is secured by the shares of Class "B" Stock so pledged, plus any interest accrued and unpaid thereon from December 31, 1967.
- (d) The balance of \$500,291 payable by the Company for the stock will be paid by credit against Harper's indebtedness to the Company, leaving a balance due the Company of \$10,665.58 which shall be paid by Harper to the Company in equal monthly installments by deduction from the amounts due to Harper from March, 1968 through December 31, 1968.
- 3. Employment Contract. The agreement dated as of January 1, 1966 between the Company and Harper, as supplemented December 29, 1966, relating to the employment of Harper by the Company is hereby released and terminated. Harper (or his heirs or assigns) shall be paid by the

Company monthly on the fifteenth of every month beginning Pebruary 1968 for the calendar year 1968 the sum of \$20,420 and for the next ninety-six months the sum of \$8,333, except that if Harper shall die at any time prior to January 1, 1969, no payment shall be made for January 15, 1969 or any month thereafter but \$100,000 shall be paid to his estate or as he shall by will direct in equal monthly installments for sixty months commencing with the first day of the month following the month in which he died. If Harper should die on or after January 1, 1969 but prior to December 31, 1975, no further monthly payment shall be made except that \$100,000 shall be paid in like installments to his estate or as he shall by will direct. If Harper should die on or after January 1, 1976, the payments that would have been paid to Harper if he had lived shall be paid in like installments to his estate or as he shall by will direct.

4. Confidential Information: Competition, Etc. (a) Harper shall in all things keep secret the affairs of the Company and its subsidiaries and shall not at any time hereafter, without the consent of the Company, divulge, furnish or make known or accessible to anyone whomsoever or use for the benefit of anyone (other than the Company) any of the secrets of the Company and its subsidiaries or any information of a confidential nature relating in any

way to the clients of the Company and its subsidiaries or to the business from time to time carried on or conducted by them All records, papers or documents kept or made by Harper relating to the business of the Company or its subsidiaries and their clients shall be and remain the property of the Company.

(b) Without the prior written consent of the Company, Harper will not at any time prior to February 1, 1969 solicit or perform any services whatsoever in respect of business being handled by the Company or any of its subsidiaries for any client of it or any of its subsidiaries on the date of this Agreement. With respect to any such client, "business handled by the Company or any of its subsidiaries" shall mean (i) in case of a client substantially all of whose advertising is handled by the Company or one or more of its subsidiaries, all business of such client, (ii) in case of a client operating and placing its advertising on a divisional basis, all business of any division substantially all of whose advertising is handled by the Company or one or more of its subsidiaries, (iii) in case of a client for which the Company or one or more of its subsidiaries handles one or some of a number of products or services, only those products or services handled by the Company or one or more of

its subsidiaries. However, the foregoing restriction shall not be applicable as to any products or services as to which notice shall have been given to the Company or any of its subsidiaries that the client intends to terminate its relationship with the Company or such subsidiary with respect to such products or services.

(c) Without the prior written consent of the Company, Harper will not at any time prior to January 1, 1971 take any direct or indirect action or participate in any communication designed to induce any employee of the Company or any of its subsidiaries to leave its employ and become an employee of Harper or of any company of which Harper is an employee, officer, director or stockholder or of any partnership of which he is a partner or of any organization with which he is connected. For purposes of this subparagraph, any holding of or option to acquire less than 1% of the outstanding stock of all classes of any company shall be disregarded. The foregoing limitation shall not apply with respect to any employee of the Company or any of its subsidiaries who shall have received notice from the Company or such subsidiary or shall have given notice to the Company or such subsidiary that his employment with the Company or such subsidiary will be terminated.

- 5. Pension and Profit-Sharing Interests.

  This Agreement is not intended to cover whatever interest Harper may have under the Company's Employees' Retirement and Benefit Plan and Trust and under its Profit-Sharing Plan and Trust.
- 6. Credit Cards. Harper will surrender to the Company all credit cards issued to him as a Company officer and will reimburse the Company for all credit card charges incurred subsequent to December 31, 1967.
- 7. Conditions. (a) The obligations of Harper and the Company hereunder are conditioned on the unanimous approval by the Board of Directors of the Company, to be evidenced by resolutions duly adopted, of this Agreement and all of the terms and conditions hereof.
- (b) The obligations of the Company to buy the stock of the Company and to make the payments required to be made pursuant to paragraph 2 hereof and the obligations of Harper to sell the stock of the Company and accept the payments therefor referred to in paragraph 2 hereof are conditioned upon the completion, on or before March 15, 1968 or such later date as the parties hereto may agree upon, of arrangements satisfactory to the Board of Directors of the Company for refinancing the Company's existing indebtedness, for the financing of the Company's

obligations under paragraph 2 of this Agreement, and for the receipt of capital funds by the Company in the amount of not less than \$5,000,000, the completion of such financing to be evidenced by a resolution to that effect of the Board of Directors of the Company of which a certified copy shall be furnished to Harper.

- the stock of the Company and to make the payments required to be made pursuant to paragraph 2 hereof and the obligations of Harper to sell the stock to the Company and accept the payments therefor referred to in paragraph 2 hereof are subject to the condition that at such time there is no suit or action pending or threatened against the Company by any stockholder, or by any other person alleging damages for any act or omission to act by any director or officer or former director or officer.
- (d) Harper's obligations to sell the stock to the Company and accept the payments therefor referred to in paragraph 2 hereof are subject to the condition that each member of the Board of Directors of the Company shall furnish a covenant not to bring any claim, suit or other proceeding against Harper based on any allegation of any liability of Harper to the Company, its officers, directors or stockholders; provided,

however, that if suit is brought by third parties against the Company or any present or former officer or director with respect to a matter involving any act or omission of, or transaction with or involving, Harper, then such defendant's covenant shall be of no force and effect and such defendant shall be free to assert whatever rights he would have had to bring any claim, suit or other proceeding against Harper as if such defendant had not furnished such covenant.

9.

- (e) If any of the foregoing conditions has not been satisfied, it is agreed between the parties hereto that the employment agreement as supplemented between the Company and Harper referred to in paragraph 3 hereof shall remain unaffected by this Agreement, and each party hereto agrees not to assert, in any action or proceeding in respect of or involving such employment agreement or alleging any breach thereof, that the execution of this Agreement had any effect on the legal relations of the parties.
- 8. Covenant Not To Sue. Harper, subject to the fulfillment of the conditions set forth in paragraph 7 hereof, will not bring any claim, suit or other proceeding against the officers, directors or stockholders (as such) of the Company based on any allegation of liability arising out of any act, omission or transaction which has occurred

prior to the date hereof; provided, however, that if suit is brought by third parties against Harper with respect to a matter involving any act or omission of or transaction with or involving the Company or any present or former officer or director, then the covenant of Harper contained in this paragraph 8 shall be of no force and effect and Harper shall be free to assert whatever rights he would have had to bring any claim, suit or other proceeding as if he had not furnished such covenant.

- 9. Publicity. Attached hereto as Exhibits A and B, respectively, are press releases approved by the parties hereto, the first for release by the Company and the second for release by Harper. These releases shall be made available through publicity channels by the respective parties no earlier than the signing of this Agreement by each of the parties.
- 10. Place of Payment. Payments by the Company to Harper required by the provisions of this Agreement shall be made by check (subject to collection) drawn on New York Clearing House funds payable to Marion Harper, Jr. (or such other payee as he may by written notice to the Company specify from time to time) and delivered (until further notice by Harper to the Company) to the firm of Debevoise, Plimoton, Lyons & Gates for the attention of Samuel E. Gates or William Everdell.

February 1, 1968

ll. <u>Further Assurances</u>. Each of the parties hereto will prepare, execute and deliver such assignments, assumption agreements, certificates and other instruments as the other may reasonably request to evidence, confirm or implement any of the foregoing.

If the foregoing is in accordance with your understanding of the agreement between us, please so indicate by signing the accompanying copy and returning the same to the Company, in which event the foregoing shall become a binding contract between us.

Yours very truly,

THE INTERPUBLIC GROUP OF COMPANIES. INC.

Rv

President

Accepted:

arion Harper

February 2, 1968

#### INTERPUBLIC PRESS RELEASE

The resignation of Marion Harper, Jr., as a director, an officer and an employee of The Interpublic Group of Companies, Inc., was announced today by Robert E. Healy, President of Interpublic.

The Board of Directors of Interpublic elected

Mr. Healy Chairman of the Board. In addition he continues
as President and chief executive officer.

Pebruary 2, 1968

A STATEMENT FROM MARION HARPER, JR.

"As the founder of Interpublic and having participated in its growth and successful service to the clients,
I have been reluctant to enter into any public discussion
which might, in any way, have an adverse effect on the
company.

"The extent of current rumors and misinformation, however, cause me to feel that immediate clarification of my position has become mandatory.

"I have therefore concluded that only my withdrawal might serve to resolve the basic policy differences which persist.

"Believing it to be in the best interests of the company and of all concerned, I have today submitted my resignation as an officer and director of The Interpublic Group of Companies, Inc., effective immediately, and have severed all of my relationships with that company.

"I shall pursue my activities in the field of communications. Any discussion of my plans at this time would be premature.

"In due course, I shall make known the program of Marion Harper and Associates, Inc."

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
345 PARK AVENUE NEW YORK, N.Y. 10022

TELEPHONE (212) 935-8000 TELECOPIER (212) 935-8302

CABLE LONGSIGHT, N. V. TELEX 18-783:

RANDOLPH E. PAUL (1946-1956) LOUIS S. WEISS (1927-1950)

JOHN F WHARTON ROBERT E. SAMUELS COUNSEL WASHINGTON OFFICE 1775 K STREET, M. W. WASHINGTON, D. C. 20006 WASHINGTON, D. C. 20006 TELEPHONE (202) 290-6370 CABLE LONGSIGHT WASHINGTON

WRITER'S DIRECT DIAL NUMBER

935-8384

August 16, 1973

SIMON M. RIPKIND
LLOYD R. GARRISON
LLOYD R. GARRISON
LLOYD R. GARRISON
MOVARD S. SETTI
ADRIAN M. SELTI
ADRIAN M. SELTI
ADRIAN M. SELTI
ADRIAN M. SELTI
ADRIAN
MORDECAI ROCHLIN
MORDES S. LEWIS
MORDEN S. ISEMAN
JAMES S. LEWIS
THEODORE C. SORENSEN
MARTIN M.EINDARD
RICHARD M. PAUL
RORMAN ZELENGO
JOHN E. MASSENGALE
JAY M. TOPRIS
EDWARD N. COSTIKYAN
ROSERT M. MONTOOMERY, JR.
JERNACT M. MONTOOMERY, JR.
JERNACT M. MONTOOMERY, JR.
JERNACT M. MONTOOMERY, JR.
JERNACT M. GRETEL
ARTHUR RALISH
DAVID T. WASHDURN
BERNARD FINKELSTEIN
ARTHUR L. LIMAN
RICHARD R. DAVIDSON
SEYMOUR HERTZ
WALTER F. LEINHARDT
GERALD O. STERN
MANTION LONDON
ANTHONY B. RUKLIN
MARTIN LONDON
ANTHONY B. ROSDEITCHER
ROBERT L. LAUFER
JOSEPH E. BROWDY
SIDNEY S. ROSDEITCHER
ROBERT L. LAUFER
ALLEN L. THOMAS

Paul Teichman, Esq. Law Office of Benedict Ginsberg 475 Fifth Avenue New York, New York

Re: Corwin v. Interpublic

Dear Mr. Teichman:

This is to inform you, pursuant to the judgment in this action, that Interpublic has established an account at the First National City Bank, 369 Park Avenue, New York, New York, in the name "Interpublic - Corwin Litigation". The account number is 3075368. Interpublic has deposited \$60,000 in this non-interest bearing account. As we have agreed in conversations with Mr. Ramos of your office, would you please countersign and return a copy of this letter to indicate that this satisfies Interpublic's obligations under the judgment.

Sincerely,

Jack C. Auspitz

JCA:sa

and of Budent danker

EXHIBIT E - NOTICE OF REMOVAL, PETITION FOR REMOVAL, AFFIDAVIT IN SUPPORT OF PETITION AND EXHIBIT A ANNEXED TO PETITION

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

CORNIN CONSULTANTS, INC.,

Petitioner.

: HOTICE OF REMOVAL

-against-

: Index No. 6643/73

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFIT, :
W. DENNING HARVEY, and SAMUEL A. CULBERTSON, II. :

Daspondents.

5 1 R S :

PLEASE TAKE NOTICE that a verified petition, a copy of which is ammered herato, requesting removal of the above-captioned action, which is pending in the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York, was filed this day with the Clerk of said District Court pursuant to the provisions of 23 U.S.C. §§ 1441, 1442 and 1444.

Dated: New York, New York

May 3 , 1973.

Yours, etc.,

United States Attorney for the Southern District of New York Attorney for the United States of America

OF WHETE

The state of the s

Assistant United States Attorney

Post Office Address: United States Courthouse

Foley Square

Hew York, New York 19007 Telaphone: (212) 264-6537 UNITED STATES DISTRICT COURT Southern district of New York

CORMIN CONSULTANTS, INC.,

## Petitioner.

Pagainst-

: PETITION FOR REMOVAL

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA. PETER M. MOFFIT, W. DENNING HARVEY, and SAMUEL A. CULBERTSON, II,

: 73 Civ./978

MEC

#### Raspondents.

The patition for removal of the United States of America, by Mel P. Barken, Assistant United States Attorney in the office of Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, attorney for petitioner for removal, respectfully states on information and belief that:

- 1. On April 23, 1973, the United States Attorney's Office for the Southern District of New York was served with a copy of the Notice of Petition, Petition to Determine Rights to Property or Debt Pursuant to CPLR 5 5239, a copy of which is annexed hereto collectively as Exhibit A.
- 2. Shortly thereafter, the Tax Division of the Department of Justice was served with a copy of the above mentioned pleadings.
- 3. The above mentioned pleadings invoke the jurisdiction of the Supreme Court of the State of New York, County of How York.
- 4. The above mentioned pleadings did not set forth with particularity the nature of the interest or lien of United States.

- 5. The above mentioned pleadings seek to determine the rights of the named defendants to a fund presently in the amount of \$52,346.00 which is in the possession of the defendant The Interpublic Group of Companies, Inc., and to determine the priority of liens and rights in said fund among the defendants.
- 6. The above mentioned pleadings set forth a claim and lien of the United States of America to said fund arising out of a tax assessment under the Internal Revenue laws against the taxpayer Marion Harper, Jr., who is also the judgment debtor of petitioner Corwin Consultants, Inc.
- 7. No further process or plandings have been served by or upon the United States of America and no orders have been moticed to the United States of America in this action.
- U. This action may be removed by the United States of America pursuant to 23 U.S.C. 3 1441 and 23 U.S.C. 3 1444 because petitioner Corwin Consultants, Inc. 1s attempting to proceed pursuant to the provisions of 23 U.S.C. § 2410.

UMEREFORE, it is respectfully requested that this action be removed to this Court.

Dated: Hew York, Hew York

1973

Walthler North Sermour, Jr.
United States Attorney for the
Southern District of New York
Actorney for Defendant
United States of America

1171

Assistant United States Attorney Office and Fost Office Address: United States Courthouse

Follog Square Tow York, Dev York 19997 Telembone: 1993 194-9317

#### VERIFICATION

STATE OF NEW YORK } ss.:

MEL P. BARKAN, being duly sworn, deposes and soys that he is an Assistant United States Attorney for the Southern District of New York, and as such has charge of the above entitled action; that he has read the foregoing Petition for Removal and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief are based upon official records and files of the United States of America.

The reason this varification is made by deponent and not by the United States of America is that the United States of America is a sovereign corporation.

MET P. MARKAN

Assistant United States Attorney

Sworm to before me this

WALTER G. BRANNON Notary Public, State of New York No. 24-6394800 Qualified in Kings County Cert, filed in New York County Term Empirer March 30, 1978 SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

CORNIN CONSULTANTS, INC.,

Petitioner,

NOTICE OF PETITION

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY and SAMUEL A. CULBERTSON, II, Index No. 6643/73

Respondents.

sutted in deary 4/27/73

SIRS:

PLEASE TAKE NOTICE that upon the annexed petition, duly verified the 6th day of April, 1973, and upon the annexed affidavit of CHARLES E. RAMOS, sworn to the 6th day of April, 1973, an application will be made to this Court at Special Term, Part I thereof, to be held at the Courthouse, 60 Centre Street, in the City, County and State of New York, on the 7th day of May, 1973, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for judgment granting the relief demanded in the petition, and that an answer, and supporting affidavits, if any, be served at least one (1) day before such time; and where this notice of petition is served, at least ten (10) days before such time, demand is hereby made that service of an answer, and supporting affidavits, if any, be made at least five (5) days before such time.

New York County is designated as the place of trial by reason of plaintiff's principal office being located in

such county.

Dated: New York, N. Y. April 6, 1973.

Yours, etc.

BENEDICT GINSBERG Attorney for Petitioner Office & P.O. Address 475 Fifth Avenue New York, N. Y. 10017 MU 3-7079

TO:

THE INTERPUBLIC GROUP OF COMPANIES, INC.

UNITED STATES OF AMERICA

SHERIFF OF THE CITY OF NEW YORK, COUNTY OF NEW YORK

MARION HARPER, JR.

PETER M. MOFFIT

W. DENNING HARVEY

SAMUEL A. CULBERTSON, II

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

CORWIN CONSULT..NTS, INC.,

Petitioner,

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY and SAMUEL A. CULBERTSON, II,

OT MOITITES DETERMINE RIGHTS TO PROPERTY OR DEBT PURSUANT TO CPIR \$ 5239

Index No.

Respondents.

Petitioner, complaining of the respondent, by BENEDICT GINSBERG, ESQ., its attorney, alleges that:

FIRST: The petitioner is a domestic corporation with its principal office for the regular transaction of business in the City, State and County of New York.

SECOND: In an action in the Supreme Court, New York County, on the 23rd day of May, 1972, judgment was duly rendered in favor of the petitioner against MARION HARPER, JR., hereinafter referred to as the judgment-debtor, in the sum of \$52,346, and the said judgment was duly filed and docketed in the Office of the Clerk of the County of New York, on the 23rd day of May, 1972.

WHIRD: That said judgment is wholly unpaid and unsatisfied, and there is now remaining unpaid on said judgment the full amount of \$50,345, with interest from the 23rd day of they, 1978.

FOURTH: That on or about the 3rd day of October,
1972, an execution was issued out of the Supreme Court, New
York County, upon said judgment, to the Sheriff of the County
of New York.

FIFTH: That pursuant to the said execution the Sheriff of the County of New York did on the 4th day of October, 1972, levy upon a debt in the sum of \$58,333.31 due and owing from The Interpublic Group of Companies, Inc. to Marion Harper, Jr., pursuant to a contract which provides for the payment of \$100,000 a year to the said Marion Harper, Jr. through the year 1976. The total balance due on the contract is a sum in excess of \$475,000, the sum of \$58,333.31 represented seven monthly payments which had accrued to the date of the service of the execution.

SIXTH: That at the time of the making of such levy petitioner was entitled to said accrued sum by reason of its judgment, execution and levy.

United States of America, by the U. S. Treasury Department Internal Revenue Service, issued its final demand to the
Interpublic Group of Companies, Inc., demanding surrender of
the sum of \$415,948.27 levied pursuant to a notice of levy
served upon The Interpublic Group of Companies, Inc. on
October 18, 1972.

#### Exhibit A - Annexed to Petition

EIGHTH: That on or about the 14th day of January,
1972 a judgment was entered in the Supreme Court, Westchester
County against Marion Harper, Jr. in favor of W. Denning Harvey.

NINTH: That on or about the 3rd day of February,
1972 a judgment was entered in the Supreme Court, New York
County against Marion Harper, Jr. in favor of Peter M. Moffit.

TENTH: That on or about the 30th day of November, 1972 a judgment was entered in the Supreme Court, New York County against Marion Harper, Jr. in favor of Samuel A. Culbertson, II.

ELEVENTH: That on or about the 27th day of November, 1972, petitioner instituted a proceeding against the respondent The Interpublic Group of Companies, Inc., herein to require the said respondent to pay the petitioner the sum of \$52,346.

TWELFTH: That pursuant to the decision made by Mr. Justice Samuel R. Rosenberg, petitioner instituted this proceeding. A copy of said decision is annexed hereto as Exhibit "A" hereof.

THIRTEENTH: That the respondent Interpublic claims no interest in the said sum of \$58,333.31, but is holding said sum subject to the outcome of this proceeding.

WHEREFORE, the petitioner demands that a judgment be entered against the respondents, pursuant to Section 5239

of the CPLR, determining that the lien of petitioner is superior to all other liens and claims, and for such other and further relief as right and justice may require, together with the costs and disbursements of this proceeding.

> BENEDICT GINSBERG Attorney for Petitioner Office & P.O. Address 475 Fifth Avenue New York, N. Y. 10017 MU 3-7079

BETTY Z. CORWIN

, being duly sworn,

deposes and says that deponent is the President

of CORWIN CONSULTANTS, INC., the plaintiff named in the within action; that deponent has read the foregoing Petition and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because CORWIN CONSULTANTS, INC., is a domestic corporation. Deponent is an officer thereof, to wit, its President.

Sworn to before me this

6th day of April, 1973.

BETTY Z. CORWIN

CHARLES E. RALIOS
Retary Public, State of New York
Re. 31-0437850
Qualified in Hew York County
Commission Expires March 30, 1974

#### Exhibit A Annexed to Petition

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner,

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFIT, W. DENNING HARVEY and SAMUEL A. CULBERTSON, II,

AFFIDAVIT IN SUPPORT OF PETITION

Respondents.

STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

CHARLES E. RAMOS, being duly sworn, deposes and says:

I am an attorney at law associated with BENEDICT GINSBERG, the attorney for the petitioner herein and submit this affidavit in support of the within application for judgment against the respondents as prayed for in the petition.

On or about the 23rd day of May, 1972, judgment was entered and docketed in favor of the petitioner against one Marion Harper, Jr., judgment-debtor, in an action in the Supreme Court, New York County, in the sum of \$52,346. Said judgment is wholly unpaid.

That on or about the 3rd day of October, 1972, an execution was issued out of this Court upon the said judgment to the Sheriff of the County of New York.

That pursuant to the said judgment the Sheriff of the County of New York did on the 4th day of October, 1972, levy upon a debt in the sum of \$58,333.31, due and owing from The Interpublic Group of Companies, Inc. to Marion Harper, Jr., said sum representing seven monthly payments which had accrued since February 1972 under an agreement dated February 1, 1968, between The Interpublic Group of Companies, Inc. and Marion Harper, Jr.

That on the 30th day of October, 1972, the United States of America, by the U. S. Treasury Department - Internal Revenue Service, issued its final demand to The Interpublic Group of Companies, Inc., demanding surrender of the sum of \$415,948.27 levied pursuant to a notice of levy served upon The Interpublic Group of Companies, Inc. on October 18, 1972.

That on or about the 27th day of November, 1972, petitioner instituted a proceeding against the respondent Interpublic to require the said respondent herein to pay to the petitioner the sum of \$52,346.

That at the present time The Interpublic Group of Companies, Inc. continues to hold the sum of \$58,333.31 which it has refused to pay to the petitioner or any other claimant by reason of the conflicting claims of the petitioner, the United States of America and others to this fund.

Exhibit A Annexed to Petition

That at the time of the making of such levy the petitioner was rightfully entitled to the sum in the hands of the respondent Interpublic by reason of the levy of the Sheriff of the City of New York, New York County, on the 4th day of October, 1972.

That none of the respondents nor Marion Harper, Jr., the judgment-debtor herein, have commenced any action upon said debt.

In view of the foregoing, it is respectfully requested that the relief demanded in the petition be granted.

CHARLES E. RAMOS

Sworn to before me this 6th day of April, 1973.

PAUL TEICHMAN
Notary Public, State of Now York
No. 3947015
Qualified in Masses County
Commission Expires Moren 30, 1975

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORVIN CONSULTANTS, INC.,

ANSWER

Petitioner,: 73 Civ. 1978

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC., :

UNITED STATES OF AMERICA,

PETER M. MOFFIT, W. DENNING HARVEY,

and SAMUEL A. CULBERTSON, II.

Respondents.:

Respondent, SAMUEL A. CULBERTSON, II, by his attorneys, Maass, Levy, Friedman, Hirsch & Stern, answering the petition herein, as follows:

FIRST: Denies that he has information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 11 and 12.

#### AS AND FOR RESPONDENT. SAMUEL A. CULBERTSON, II COUNTERCLAIM AND CROSS CLAIM

SECOND: The Respondent herein instituted an action against Marion Harper, Jr., Middle River Development Corporation, Middle River Agri Business, Inc., Marion Harper Associates, Inc., and Mesalina International Trade Comporation, to recover moneys due under a certain series of notes and said action terminated in a judgment

Exhibit F - Answer to Petition by Culbertson in favor of your Respondent in the sum of \$608,180.90. Said judgment was duly filed and docketed in the Office of the Clerk of the County of New York on November 30, 1972.

THIRD: Said judgment is wholly unpaid and unsatisfied, and there is now remaining unpaid on said judgment the sum of \$608,180.90 with interest thereon from November 30, 1972.

FOURTH: An execution was issued out of the Supreme Court, New York County, upon said judgment, to the Sheriff of New York County.

FIFTH: Pursuant to said execution the Sheriff of New York County did on the 7th day of February 1973 levy upon a debt in the sum of \$91,663 due and owing from The Interpublic Group of Companies, Inc. to Marion Harper, Jr., under a contract which provides for the payment of \$100,000 a year to the said Marion Harper, Jr. through the year 1976. The total balance due on the contract is a sum in excess of \$475,000, and the sum of \$91,663 represented eleven monthly payments which had accrued to the date of the service of the execution.

SIXTH: At the time of the making of the said levy, Respondent was entitled to said accrued sum by reason of its judgment, execution and levy.

Exhibit F - Answer to Petition by Culbertson
SEVENTH: By virtue of said execution Respondent

has secured a priority to the monies now held by The Interpublic Group of Companies, Inc. under its contract with Marion Harper, Jr.

EIGHTH: That The Interpublic Group of Companies, Inc. claims no interest in the said sum of \$475,000 but is holding same subject to the outcome of this proceeding.

WHEREFORE, the Respondent, SAMUEL A. CULBERTSON, II, demands that a judgment be entered against the petitioner, CORWIN CONSULTANTS, INC., and against the Co-Respondents, THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFIT, W. DENNING HARVEY, pursuant to Section 5239 of the CPLR, determining that the lien of your Respondent is superior to all other liens and claims, and for such other and further relief as to this Court may seem just and proper, together with the costs and disbursements of this proceeding.

MAASS LEVY FRIEDMAN HIRSCH & STERN

Attorneys for Respondent SAMUEL A. CULBERTSON, II, 100 Park Avenue New York, New York 10017 Tel. No. 626-2676

## Exhibit F - Answer to Petition by Culbertson ATTORNEY'S AFFIPMATION 49a

STATE OF NEW YORK )

COUNTY OF NEW YORK )

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is the attorney of record for Samuel A. Culbertson, II, a Respondent in the within proceeding; that deponent has read the foregoing Answer and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Deponent further says that the reason this verification is made by deponent and not by Respondent is that the Respondent resides and is presently without the State.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Documents and information supplied by the Respondent and correspondence.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: June 25, 1973

CHITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

COMMIN COMSULTANTS, INC.,

Patitionar,

- against -

AMEWE2

THE INTERPUBLIC GROUP OF COMPANIES, INC., : UNITED STATES OF AMERICA.

73 CLv. 1973

PETER M. MOFFIT, U. DEMRING HARVEY, SAMURL A. CULBERTSON, II, and COWLES COMMUNICATIONS, INC.,

Respondents.

The respondent, COWLES COMMUNICATIONS, INC., by its attorneys, Chapman & Burke, answers the patition herein as follows:

FIRST: Danies any knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth.

AS AND FOR A COUNTERCLAIM
AND CROSS CLAIM AGAINST THE
PUTITIONER AND THE RESPONDENTS
PARTED ANOVE

SECOND: That the respondent COMLES COMMUNICATIONS, INC., herein, instituted on cetion against Parion Marker Associates, INC., and Marion Marker, Jr., to recover menies due under two previously notes executed by Marion Marker Associates, INC., the payment of which was duly guaranteed by Marion Marker, Jr., and the said action terminated in a judgment in favor of said respondent in the sum of \$55,320.34 with interest thereon from the 12th day of June, 1972, and said judgment was duly filled and entered in the office of the Clark of the County of New York on home 12, 1972, and thereafter, in the Supreme Court, County of Westchouter, Shale of New York.

Exhibit G - Answer and Counterclaim to Petition by Cowles THIRD: That said judgment is wholly unpaid and

unsatisfied and there is now due and owing to the respondent herein the sum of \$56,820.54 with interest thereon from the 12th day of June, 1972.

FOURTH: That heretofore, an execution was levied by the Sheriff of the County of New York upon the real and personal property belonging to the said MARION HARPER, JR., on or about February 23, 1972.

FIFTH: That pursuant to said execution, the Sheriff of the County of New York, on the 28th day of February, 1972, did levy upon a debt in the sum of approximately \$91,663.00 due and owing from THE INTERPUBLIC GROUP OF COMPANIES, INC., to MARION MARPER, JR., under a contract which provided for the payment of \$100,000.00 annually to said MARION MARPER, JR., through the year 1976. The total balance due on said contract is a sum in excess of \$141,000.00. At the time of the making of said levy, the respondent COWLES COMMUNICATIONS, INC., was entitled to said sum by reason of said entry of judgment thereon.

SINTH: That at all times hereinafter mentioned,
McCANN-ERICKSON, INC., was and still is a wholly-owned
subsidiary of the respondent THE INTERPUBLIC GROUP OF COMPANIES,
INC., and by reason of the aforesaid, the said respondent did
dominate and control the activities on behalf of McCANN-BRICKSON,
INC.

DEWRITH: That at the time of the making of the said levy, the respondent was entitled to said sum by reason of the judgment, execution and levy of attachment.

Exhibit G - Answer and Counterclaim to Petition by Cowles 528 MIGHTH: That by reason of the judgment and levy of attachment, the respondent COWLES COMMUNICATIONS, INC., secured a priority on the monies now held by the respondent THE INTERPUBLIC GROUP OF COMPANIES, INC., under its contract with MARION MARPER, JR.

MINTH: That the respondent THE INTERPUBLIC GROUP OF COMPANIES, INC., claims no interest in said sum of \$141,000.00 but is holding the same subject to the outcome of this proceeding.

TENTH: That the respondent COWLES COMMUNICATIONS, INC., has been informed that the judgments obtained by the respondents PETER M. MOTFIT and W. DENNIUG HARVEY have been paid and satisfied in full and that said respondents are not interested in the outcome of this proceeding.

WHEREFORE, the respondent COMLES COMMUNICATIONS, INC., demands judgment to be entered against the petitioner CORWIN CONSULTANTS, INC., and against the co-respondents THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA and SAMUEL A. CULBERTSON, II, pursuant to Section 5239 of the CFLR, determining the lien of the respondent to be superior to all other liens and claims and for such other and further relief as this Court may deen fit and proper under the circumstances, together with the costs and disbursements of this action.

CHAPMAN & BURKE

Attorneys for Respondent CHILES COMMINICATIONS, INC.

420 Lexington Avenue

Hew York, New York 10017

Telephone Number (212) 679-1175

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

WEICE COPY

Petitioner,

-against-

REPLY

THE INTERPUBLIC GROUP OF COMPANIES,

----X

INC., THE UNITED STATES OF AMERICA, PETER M. MOFFIT, W. DENNING HARVEY,

SAMUEL A. CULBERTSON, II, and COWLES COMMUNICATIONS, INC.,

73 Civ 1978

Respondents.

Petitioner, by BENEDICT GINSBERG, its attorney, for its reply to the counterclaim and cross-claim contained in the answer of the respondent, Cowles Communications, Inc., alleges:

FIRST: Denies each and every allegation contained in paragraphs SEVENTH and EIGHTH of the answer of the respondent, Cowles Communications, Inc., herein.

SECOND: Denies knowledge sufficient to form a belief as to each and every allegation contained in paragraphs SECOND, THIRD, FOURTH, SIXTH and NINTH of the answer of the respondent, Cowles Communications, Inc. herein.

THIRD: Denies knowledge sufficient to form a belief as to each and every allegation contained in paragraph FIFTH of the answer of the respondent, Cowles Communications, Inc.,

except denies that at the time of the making of the said levy, the respondent Cowles Communications, Inc. was entitled to the sum described therein by reason of the entry of judgment described therein.

WHEREFORE, the petitioner demands judgment dismissing the counterclaim and cross-claim of the respondent Cowles Communications, Inc., with costs, and demands judgment as prayed for in the petition.

Dated: New York, N. Y. October 3, 1973.

BENEDICT GINSBERG Attorney for Petitioner 475 Fifth Avenue New York, N. Y. 10017 MU 3-7079

TO:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS.
Attorneys for Respondent The Interpublic Group of Companies, Inc.
345 Park Avenue
New York, N. Y. 10022

WHITNEY NORTH SEYMOUR, JR., ESQ.
United States Attorney for the Southern District of New York
Attorney for the United States of America
United States Courthouse
Foley Square
New York, N. Y. 10007

MAASS LEVY FRIEDMAN HIRSCH & STERN, ESQS. Attorneys forRespondent Samuel A. Culbertson II 100 Park Avenue New York, N. Y. 10017

CHAPMAN & BURKE, ESQS.
Attorneys for the Respondent Cowles Communications, Inc.
420 Lexington Avenue
New York, N. Y. 10017

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner, :

73 Civ. 1978 MEL

-against-

THE INTERPUBLIC GROUP OF COMPANIES, :
INC., UNITED STATES OF AMERICA,
PETER M. MOFFITT, W. DENNING HARVEY, :
SAMUEL A. CULBERTSON, II, and
COWLES COMMUNICATIONS, INC., :

ANSWER TO CROSS-CLAIM

Respondents.

Respondent The Interpublic Group of Companies, Inc. ("Interpublic"), by its attorneys Paul, Weiss, Rifkind, Wharton & Garrison, for its answer to the cross-claim of respondent Cowles Communications, Inc.:

- 1. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 1, 2, 3 and 4.
- 2. Denies each and every allegation contained in paragraph 5, except admits that on February 29, 1972 its wholly-owned subsidiary McCann-Erickson, Inc. was served with copies of documents by the Sheriff of New York County and refers to the documents so served for the contents thereof, and further admits that the sum of \$166,660 is now owing to Marion Harper, Jr. ("Harper") pursuant to the terms of an agreement dated February 1, 1968 between Harper and Interpublic ("termination agreement") and refers to the termination agreement for the provisions thereof.

Exhibit I - Answer of Interpublic to Cross-Claim

3. Denies each and every allegation contained in paragraph 6, except admits at all relevant times McCann-Erickson, Inc. has been a wholly-owned subsidiary of Interpublic

- 4. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 7 and 8.
- 5. Denies each and every allegation contained in paragraph 9, except admits that it holds \$166,660 due under the terms of the termination agreement, which amount represents the payments due under the termination agreement on and after March 15, 1972, and that \$60,000 of such amount is held in the form of an account in satisfaction of Interpublic's obligations under a judgment signed by Justice Samuel R. Rosenberg of the Supreme Court of New York County and entered by the Clerk of New York County on June 5, 1973.
- 6. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 10.

## WHEREFORE, Interpublic demands:

- 1. That the Court determine the amount and priority for payment of each claim asserted against Harper by the other parties to this proceeding;
- 2. That upon the payment by Interpublic of the claims in the order of priority so determined up to an aggregate amount of \$483,000, or such lesser amount as may be owed pursuant to the termination agreement on the date of such determination, Interpublic be discharged from any liability to Marion Harper, Jr. or to any of the other parties to this pro-

- 3. That the Court order that all other actions and proceedings brought by any of the other parties to this proceeding concerning claims asserted by any one or more of them against Harper be stayed pending the entry of judgment in this proceeding and the disposition of any appeal therefrom or review thereof;
- 4. That Interpublic's costs and disbursements and reasonable attorneys' fees be paid out of the monies owed pursuant to the termination agreement; and
- 5. That Interpublic have such other and further relief as the Court may deem just and proper.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Attorneys for Respondent The Interpublic Group of Companies, Inc.

345 Park Avenue

New York, New York 10022

(212) 935-8000

By

# EXHIBIT J - ANSWER OF INTERPUBLIC TO CROSS-CLAIM UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

73 Civ. 1978 MEL

Petitioner, :

- against -

ANSWER TO CROSS-CLAIM

THE INTERPUBLIC GROUP OF COMPANIES, :
INC., UNITED STATES OF AMERICA,
PETER M. MOFFITT, W. DENNING HARVEY, :
SAMUEL A. CULBERTSON, II, and
COWLES COMMUNICATIONS, INC., :

Respondents.

Respondent The Interpublic Group of Companies, Inc.

("Interpublic"), by its attorneys Paul, Weiss, Rifkind, Wharton
& Garrison, for its answer to the cross-claim of respondent
Samuel A. Culbertson, II ("Culbertson"):

- 1. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 1, 2, 3 and 4.
- 2. Denies each and every allegation contained in paragraph 5, except admits that on February 7, 1973, it was served with copies of documents by the Sheriff of New York County and refers to the documents so served for the contents thereof, and further admits that the sum of \$166,660 is now owing to Marion Harper, Jr. ("Harper") pursuant to the terms of an agreement dated February 1, 1968 between Harper and Interpublic ("termination agreement") and refers to the termination agreement for the provisions thereof.
- 3. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 6 and 7.

Exhibit J - Answer of Interpublic to Cross-Claim
4. Denies each and every allegation contained in paragraph 8, except admits that it holds \$166,660 due under the terms of the termination agreement, which amount represents the payments due under the termination agreement on and after March 15, 1972, and that \$60,000 of such amount is held in the form of an account in satisfaction of Interpublic's obligations under a judgment signed by Justice Samuel R. Rosenberg of the Supreme Court of New York County and entered by the Clerk of New York County on June 5, 1973.

# WHEREFORE, Interpublic demands:

- 1. That the Court determine the amount and priority for payment of each claim asserted against Harper by the other parties to this proceeding;
- 2. That upon the payment by Interpublic of the claims in the order of priority so determined up to an aggregate amount of \$483,000, or such lesser amount as may be owed pursuant to the termination agreement on the date of such determination, Interpublic be discharged from any liability to Marion Harper, Jr. or to any of the other parties to this proceeding:
- 3. That the Court order that all other actions and proceedings brought by any of the other parties to this proceeding concerning claims asserted by any one or more of them against Harper be stayed pending the entry of judgment in this proceeding and the disposition of any appeal therefrom or review thereof;
- 4. That Interpublic's costs and disbursements and reasonable attorneys' fees be paid out of the monies owed pursuant to the termination agreement; and

# Exhibit J - Answer of Interpublic to Cross-Claim

5. That Interpublic have such other and further relief as the Court may deem just and proper.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Attorneys for Respondent The Interpublic Group of Companies, Inc.

345 Park Avenue New York, New York 10022 (212) 935-8000

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

73 Civ. 1978 MEL

Petitioner, :

- against -

THE INTERPUBLIC GROUP OF COMPANIES, :

INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, :

SAMUEL A. CULBERTSON, II, and COWLES COMMUNICATIONS, INC.,

Respondents.

ANSWER

Respondent The Interpublic Group of Companies, Inc. ("Interpublic"), by its attorneys Paul, Weiss, Rifkind, Wharton & Garrison, for its answer to the petition of Corwin Consultants, Inc.:

- 1. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 1, 2, 3 and 4.
- Denies each and every allegation contained in paragraph 5, except admits that on or about October 4, 1972, it was served with copies of documents by the Sheriff of New York County and refers to the documents so served for the contents thereof, and further admits that the sum of \$166,660 is now owing to Marion Harper, Jr. ("Harper") pursuant to the terms of an agreement dated February 1, 1968 between Harper and Interpublic ("termination agreement") and refers to the termination agreement for the provisions thereof.
- 3. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations

- 4. Denies each and every allegation contained in paragraph 7, except admits that on October 18, 1972, it was served with a document called a "Notice of Levy" and refers to that document for the contents thereof, and further admits that on October 30, 1972, it was served with a document called a "Final Demand" and refers to that document for the contents thereof.
- 5. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs 8, 9 and 10.
- 6. Admits the allegations contained in paragraphs 11 and 12.
- 7. Denies each and every allegation contained in paragraph 13, except admits that it holds \$166,660 due under the terms of the termination agreement, which amount represents the payments due under the termination agreement on and after March 15, 1972, and that \$60,000 of such amount is held in the form of an account in satisfaction of Interpublic's obligations under the decision of Justice Rosenberg, on which decision judgment was entered on June 5, 1973.

### WHEREFORE, Interpublic demands:

1. That the Court determine the amount and priority for payment of each claim asserted against Harper by the other parties to this proceeding;

Exhibit K - Answer of Interpublic to Cross-Claim

2. That upon the payment by Interpublic of the

claims in the order of priority so determined up to an aggregate amount of \$483,000, or such lesser amount as may be owed pursuant to the termination agreement on the date of such determination, Interpublic be discharged from any liability to Marion Harper, Jr. or to any of the other parties to this proceeding:

- 3. That the Court order that all other actions and proceedings brought by any of the other parties to this proceeding concerning claims asserted by any one or more of them against Harper be stayed pending the entry of judgment in this proceeding and the disposition of any appeal therefrom or review thereof;
- 4. That Interpublic's costs and disbursements and reasonable attorneys' fees be paid out of the monies owed pursuant to the termination agreement; and
- 5. That Interpublic have such other and further relief as the Court may deem just and proper.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By

Attorneys for Respondent The Interpublic Group of Companies, Inc.

345 Park Avenue

New York, New York 10022

(212) 935-8000

#### EXHIBIT L - REPLY OF CULBERTSON

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner, : REPLY

-against-

THE INTERPUBLIC GROUP OF COMPANIES, INC., THE UNITED STATES OF AMERICA.

PETER M. MOFFIT, W. DENNING HARVEY, : 73 Civ 1978

SAMUEL A. CULBERTSON, II, and

COWLES COMMUNICATIONS, INC.,

Respondents.

Respondent, SAMUEL A. CULBERTSON, II, by Maass
Levy Friedman Hirsch & Stern, his attorneys, for his reply
to the counterclaim and cross-claim contained in the answer
of the respondent, Cowles Communications, Inc., alleges:

FIRST: Denies each and every allegation contained in paragraphs SEVENTH and EIGHTH of the answer of the respondent, Cowles Communications, Inc., herein.

SECOND: Denies knowledge sufficient to form a belief as to each and every allegation contained in paragraphs SECOND, THIRD, FOURTH, SIXTH and NINTH of the answer of the respondent, Cowles Communications, Inc. herein.

THIRD: Denies knowledge sufficient to form a belief as to each and every allegation contained in paragraph FIFTH of the answer of the respondent, Cowles Communications, Inc., except denies that at the time of the making of the said levy, the respondent, Cowles Communications, Inc. was entitled to the sum described therein by

reason of the entry of judgment described therein.

WHEREFORE, the respondent, Samuel A. Culbertson,

II, demands judgment dismissing the counterclaim and crossclaim of the respondent, Cowles Communications, Inc., with

costs, and demands judgment as prayed for in the respondent's answer and counterclaim.

Dated: New York, N. Y. October 4, 1973.

MAASS LEVY FRIEDMAN HIRSCH & STERN

By\_

A Member

Attorneys for Respondent Samuel
A. Culbertson, II
100 Park Avenue
New York, N. Y. 10017
Tel. 686-2676

TO:

BENEDICT GINSBERG, ESQ. Attorney for Petitioner 475 Fifth Avenue New York, N. Y. 10017

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS. Attorneys for Respondent The Interpulbic Group of Companies, Inc. 345 Park Avenue
New York, N. Y. 10022

WHITNEY NORTH SEYMOUR, JR. ESQ.
United States Attorney for Southern District of N. Y.
Attorney for the United States of America
United States Courthouse
Foley Square
New York, N. Y. 10007

CHAPMAN & BURKE, ESQS.
Attorneys for Respondent Cowles Communications, Inc.
420 Lexington Avenue
New York, N. Y. 10017

W. S. GOVERNMENS PENTING OFFICE: 1970-374.

Revenue Officer Gerald Snyder

Tel -- 264-3381-

FORM 668-A

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

10-18-72

NOTICE OF LEVY

10

The Interpublic Group of Companies Inc. 1271 Avenue of the Americas New York, N.Y., 10019



Menhatten ...

TAX, FORM	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID BALANCE OF ASSESSMENT	STATUTORY ADDITIONS	TOTAL.
	12-31-63		042-16-1391 1325127312000 1325127312001 1325127312002	\$1,90,996.35 \$5,690.05 \$9,030.61 (24,080.77	546.09	246,054.18 86,236.17 59,423.47 24,244.45
				· · · ·		

TOTAL AMOUNT DUE

\$415,950.27

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and their such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and beionging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payage of his right liability. Checks or money orders should be made payable to "Internal Revenue Service".

Gerald Snyder

Revenue Officer

120 Church ST. Hen York, HY, 10:

(Name and Address of Taxpayer)

Marion Harper dr.
c/o Lane 250 Madison Ave. New York, NY, 1001.6
and
c/o Poter Notz
La Grique, 1196 Grand, Switzerland

CERTIFICATE OF FERVICE

I hereby certify that this lavy was served by delivering a copy of this notice of lavy to the person named below.

Swim A KIERNAY JR

ASSISTANT SCORT CY-

T	i,s.	TREASURY DEPART	MENT - INTERNAL F	EYEJE SERVICE	
FORM 668-C			IAL DEMAND		
DISTRICT Man	hattan	0	10-30-72		
ro: The I: 1271	nterpublic Group of Avenue of the Amer	Companies In icas New Yo	c. rk, N.Y., 100	19	
On Octob	on Tr - Assistant S	ectv.	~ 1271 Av	d upon you a levy, berpublic Group of enue of the Ameri	cas Mc nomes 10
of levy, on all p	property, rights to proper	ty, moneys, cred	its and bank dep	osits then in your pos	session, to the
Y 200 M	ging to, or owned by_dison Ave. NYC			debted to the United St	
for unpaid interna	I revenue taxes, together w	who was at the tit with additions prov	ided by law which	had accrued thereon at	the time of levy,
	ted at that time to the sum e of levy, or for such less		27 Deman	d was made upon you fo	r the amount set
forth in the notice not been met.	e of levy, or for such less	er sum da you ma	,,		
	on is invited to the provis		22 Internal Roye	nue Code as follows:	
or rights for alsomand and (c) Enforcement (1) Extent (2) Extent demand by the Secrety or rights not so and interest on suc graph shall be created as the collection of which a ray has be obligation to the S the delinquent tays satisfied pursuant such nurrenter or a property (c) Person D plower of a ratineter of a ratine	ship, who as such officer, empl	son who fails or refusible in his own person the amount of taxes for onnum from the day the restoral lishility such presents of (or oblice of better of the property of rights allowed by the property of his deligible of Serebry of his deligible of the pays a lishility under try or rights to property or his deligible of the day of the best of the day o	cs to surrender any promote the collection of whe stack to the Uniter the collection of whe of such levy. Any an imposed by pora trapito property without to property without to property without to be imposed by part of such pergated with respect to egate, surrenders such subsection (cff1) should be a partially from such as scharged from any obtain, includes an office der a duty to surrende	roperty or rights to property, and States in a sum equal to the such levy has been made about (other than costs) recont (i), if any person required easonable cause, such personally shall be credited against property or rights to property or rights to property of the discharged from any observed or payment. In the collection or liability to any bear or employee of a corporation the property or rights to pro-	subject to levy, upon the value of the prop- , together with costs wered under this para- to surrender property in shall be limble for a set the tax liability for y subject to levy upon y (or discharges such iliquiton or liability to see of a levy which is the first of the control of the co
as you may have final demand we the Internal Re- ice, it will be a	again made for the amount to been indebted to the to ithin five days from its sevenue Code. If, however, deemed to be finally refuse tute auptral algore.	ervice, no action	will be taken to a	enforce the provisions of	of section 6332 of e date of its serv
SIGNATURE	lá Snyder	Revenue Of	ficer	120 Church St. 1	lev York, Ily.
•	I hereby certify that	CERTIFICAT	E OF SERVICE was served by hand	ing a copy thereof to:	
ENWIN	A KIERJA	JR	DATE	TIME TIME	RY
REVERUE OFFICE	OF A-151.195 A	Jew York M	1007-30,1	DATE 16/20/	72
	120000000000000000000000000000000000000			FO	RM.668-C IREV. S.

## SUPPLEMENTAL AFFIDAVIT BY CHARLES E. RAMOS (Filed November 26, 1973)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK



CORWIN CONSULTANTS, INC.,

Petitioner,

-against-

SUPPLEMENTAL

AFFIDAVIT

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON II, and COWLES COMMUNI-CATIONS, INC.,

73 Civ. 1978 MEL

Respondents.

STATE OF NEW YORK )

SS.:

COUNTY OF NEW YORK)

CHARLES E. RAMOS, being duly sworn, deposes and says:

That I am an attorney associated with BENEDICT GINSBERG, the attorney for the petitioner herein, and submit this supplemental affidavit in support of petitioner's motion for summary judgment.

The answer of the respondent United States of America was served on November 17, 1973, some five (5) months in default. This supplemental affidavit is respectfully submitted in order to cover those issues raised by the respondent United States of America in its answer, which answer was not received in time to be included in the moving papers.

The answers of the respondent United States of America are annexed hereto as Exhibits 1, 2 and 3 of this supplemental

The respondent United States of America fails to set forth any basis for denying the petitioner's motion for summary judgment. The answer together with its counter-claim and cross-claim fails to set forth facts that would indicate that the United States of America perfected its lien to the \$60,000 fund described in the moving affidavit prior to the lien of the petitioner. The key to the case is set forth in its counter-claim and cross-claim at paragraphs 6 through 19 where the following are alleged:

- (a) A notice of federal tax lien was filed in Westchester County on April 15, 1970 (Exhibit 1, paragraph 8).
- (b) A notice of federal tax lien was filed in West-chester County and New York County on January 12, 1971 (Exhibit 1, paragraph 9).
- (c) A notice of levy was served upon the respondent Interpublic on January 12, 1971 (Exhibit 1, paragraph 10).
- (d) An additional assessment of taxes was made on September 29, 1972 (Exhibit 1, paragraph 11).
- (e) A notice of federal tax lien was filed with the county clerk of New York County on October 3, 1972 (Exhibit 1, paragraph 12).

Pursuant to the United States Code Section 6323, only one of the above actions taken by the respondent United States of America could constitute the perfecting of a tax lien as against a judgment creditor and none of the actions set

forth above perfect a lien prior to the petitioner's lien. The mere filing of a notice of federal tax lien or the assessment of additional taxes due does not perfect any lien priority against a judgment creditor who has perfected his lien. Only the allegation described at (c) above, the service of a notice of levy, could perfect a lien that could defeat the rights of a judgment creditor.

The notice of levy which was served upon the respondent Interpublic by the respondent United States of America on January 12, 1971 does not concern the petitioner's lien nor the fund to which petitioner's lien attaches. That levy grants to the respondent United States of America a lien against all assets or debts of the judgment debtor (taxpayer) held by the respondent Interpublic as of the time of the levy. The fund in question represents payments accruing between February and October of 1972, which accrued payments were not in existence and could not be attached in January of 1971.

The contract between Harper and the respondent Interpublic (Exhibit C of the moving affidavit) was not for payments certainly to become due, but rather it provides that Harper was to be paid each month so long as he lived up to his obligations under that contract. Each payment is therefore a separate asset of the judgment debtor, which becomes a debt owed from the respondent Interpublic to the judgment debtor (Harper) only once it has accrued.

71a

Since the rights of Harper under the contract may be terminated at any time it is incumbent upon the judgment creditors of Harper to be most diligent in perfecting their liens as each accrued payment comes into existence.

The petitioner caused the Sheriff of New York County to execute upon its judgment and perfect its tax lien at a time when payments had accrued from February to October of 1972 without any other judgment creditors (including the United States) having served valid executions or orders of attachment. Therefore the accrued payments from February to October existed as one debt, sufficient to satisfy the petitioner's judgment, owed by the respondent Interpublic to the judgment debtor, Harper, which at the time of the execution of petitioner's judgment was unencumbered by any prior lien.

WHEREFORE, in view of the foregoing it is respectfully requested that the within motion be granted.

Sworn to before me this

21 day of hw. , 1973.

CHARLES E. RAMOS

PAUL TEICHMAN
Hotary Public, State of New York
No. 3947015
Qualified in Nassau County
Commission Empires March 20, 1978

EXHIBIT I - ANSWER OF RESPONDENT UNITED STATES OF AMERICA

MPB: iw 73-1321

> UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORVIN CONSULTANTS, INC.,

: ANSWER, COUNTED CLAIM AND CROS

72a

Petitioner, : CLAIM

: 73 Civ. 1978 (DEL)

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFIT, W. DENNING HARVEY, SAMUEL A. CULBERTSON, II and COWLES COMMUNICA-TIONS, INC.,

Respondents.

Respondent, United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York, for its Answer to the Petition herein and for its Counterclaim and Crossclaim against the other parties hereto, states as follows:

#### ANSWER

- 1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 3, 4, 5, 8, 9, 10 and 11 of the Petition.
- 2. Denies each and every allegation contained in paragraph 6 of the Petition.
- 3. Denies each and every allegation contained in paragraph 7 of the Petition except admits that on October 30, 1972, the Internal Revenue Service, issued its final demand to the Interpublic Group of Companies, Inc. (Interpublic) demanding surrender of the debt owed by Interpublic to Marion Harper, Jr, (the Taxpayer).

- 4. Admits the allegations contained in paragraph 12 of the Petition.
- 5. Admits the allegations of paragraph 13 of the Petition except that at the present time the amount being held by Interpublic has substantially increased.

### COUNTERCLAIM AND CROSSCLAIM

- 6. This Counterclaim and Crossclaim has been authorized and requested by Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and has been directed by the Attorney General of the United States.
- 7. The Taxpayer indebted to the United States of America for 1968 income tax in the amount of \$373,730.50 plus statutory additions which liability was assessed on November 28, 1969.
- 8. A Notice of Federal Tax Lien for the aforesaid
  1968 liability was filed with the County Clerk of Westchester
  County on April 15, 1970. The Taxpayer resided in Westchester
  County on that date.
- 9. A Notice of Federal Tax Lien for the aforesaid 1968 liability was again filed with the County Clerk of Westchester County on January 12, 1971. On the same date the same Notice was filed with the County Clerk of New York County. The Taxpayer resided in one or both of those counties on that date.
- 10. A Notice of Levy was served by the Internal Revenue Service upon Interpublic on January 12, 1971, showing

MP3: iw 73-1321

Exhibit I - Answer of Respondent United States of America that the total then due to the Internal Revenue Service for the Taxpayer's 1968 tax liability was \$396,923.65.

- 11. The Taxpayer also indebted to the United States for 1963, 1964 and 1965 income texes in the total amount of \$168,895.90 plus statutory additions which were assessed on September 29, 1972.
- 12. A Notice of Federal Tex Lien for the aforesaid 1963, 1964 and 1965 liabilities was filed with the County Clerk of New York County on October 3, 1972 at 10:32 A.M. The Texpeyer resided in New York County at the time.
- 13. No party appearing in this action perfected any judgment lien against the Taxpayer's property prior to April 15, 1970.
- 14. Mo party appearing in this action perfected any judgment lien against the Taxpayer's property prior to January 12, 1971.
- 15. No party appearing in this action perfected any judgment lien against the Taxpayer's property prior to October 3, 1972 at 10:32 A.M.
- 16. The amount of the aforesaid 1963, 1964, 1965 and 1968 taxes remaining unpaid and due and owing to the United States of America totals \$430,478.07 plus statutory additions from July 31, 1973.
- 17. There is a debt due and owing to the Taxpayer from Interpublic pursuant to a contract datad February 1, 1968, pursuant to which a fund in excess of \$150,000 has been created and pursuant to which payments are to be made to the Taxpayer through the year 1976.

MPB: iw 73-1321

Exhibit I - Answer of Respondent United States of America

18. The aforesaid Federal Tax Liens are valid and subsisting in the amount of the aforesaid tax liabilities upon all property and rights to property including the Tax-payer's right to receive the fund and payments referred to in paragraph 17 above.

19. The aforesaid Federal Tax Liens have priority over and are superior to the judgment lien of any party appearing herein.

WHEREFORE, judgment is demanded as follows:

- (a) That the United States has valid and subsisting liens in the amount of the unpaid tax liabilities of Marion Harper, Jr. for the years 1963, 1964, 1965 and 1968 upon all property and rights to property belonging to said Marion Harper, Jr., including the right to receive from the Interpublic Group of Companies, Inc. the existing fund and future payments pursuant to the contract dated February 1, 1968;
- (b) That the Federal Tax Liens of the United States of America have priority over and are superior to the judgment liens of the other parties appearing herein;
- (c) That the aforesaid Federal Tax Liens be foreclosed against the rights of Marion Harper, Jr. in the contract with the Interpublic Group of Companies, Inc. dated February 1, 1968;
- (d) That the Interpublic Group of Companies, Inc. be ordered to pay over to the United States of America all moneys held pursuant to said contract and all future payments

MPB:iw 73-1321

Exhibit I - Answer of Respondent United States of America pursuant to said contract when they become due and payable to Marion Harper, Jr., until the aforesaid tax liabilities of Marion Harper, Jr., have been paid in full:

(e) For such other and further relief as the Court may deem just and proper including the costs and disbursements of this action.

Dated: New York, New York

November 13, 1973

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Respondent
United States of America

By: S/
MEL P. BARKAN
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6537

TO: BENEDICT GINSBERG, ESQ. 475 Fifth Avenue New York, New York 10017

PAUL, WEISS, RIFKIND, WHATRON & GARRISON 345 Park Avenue
New York, New York 10022

MAAS LEVY FRIEDMAN HIRSCH & STERN 100 Park Avenue New York, New York 10017

CHAPMAN and BURKE 430 Lexington Avenue New York, New York 10017

DANTE J. BARETTO Deputy Sheriff New York County Division EXHIBIT 2 - ANSWER OF RESPONDENT UNITED STATES OF AMERICA

VEITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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71a

COMPLE COMBULTANTS, INC.,

: AMPRIER TO CROSS-CLAIM BY SAMUEL

Petitioner,

A. CULERRISON, II

73 Civ. 1968 (MIL)

THE INTERPUBLIC CHOSP OF COMPANIES, INC., UNITED STATES OF MERICA, PETER M. MOFFIT, V. BENNING MANYEY, SAMUEL A. CULBERTSON, II and COVIES COMMUNICATIONS, INC.,

... Respondents. :

Respondent, United States of America, by its attorney,
Paul J. Curran, United States Attorney for the Southern
District of New York, for its answer to the Grosselsin of
Samuel A. Culbertson, II, states as follows:

- 1. Benies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3 and 4 of the Gresselaim.
- 2. Denies each and every allegation contained in paragraphs 5, 6 and 7 of the Crossclaim.
- 3. Admits the allegations of puragraph 8 of the Grossclaim.

WHEREFORE, judgment is demanded dismissing the Crossclaim with projudice and for such other and further relief as the Court may down just and proper together with the costs and disbursements of this action.

Dated: New York, Mar York

November 13, 1973

PAUL J. CURRAN United States Attorney for the Southern District of New York Attorney for Respondent United States of America

MRL P. BARKAN
Assistant United States Attorney
Office and Post Office Address
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6537

TO: BENEDICY GIMBERG, ESQ. 475 Fifth Avenue New York, New York 10017

Anna Carlot Service Contraction of the Contraction

PAUL, WEISE, RIPKIND, WHATRON & CARRISON 345 Park Avenue New York, New York 10022

MAAS LEVY PRIEDMAN HIRSCH & STERN 100 Park Avenue New York, New York 10017

CHAPMAN and BURKE 430 Lexington Averne New York, New York 10017

DANTE J. MARKITO
Deputy Sheriff
New York County Division
31 Chambers Street
New York, New York 10007

#### UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

COMIN CONSULTANTS, INC.,

: AMSWER TO CROSSCLAIM BY COULES COMMUNICA-

Petitioner, : TIONS, INC.

: 73 Civ. 1968 (MEL)

THE INTERPUBLIC GROUP OF COMPANIES. INC., UNITED STATES OF AMERICA. PETER M. MOFFITT, W. DENNING HARVEY, : SAMUEL A. CULBERTSON, II and COWLES COMUNICATIONS, INC.,

> Respondents. : To see a consecutive

Rospondent, United States of America, by its attorney, Paul J. Curran, United States Attorney for the Southern District of New York for its Answer to the Crossclain of Cowles Communications, Inc., states as follows:

- 1. Denies knowledge or information oufficient to form a balief as to the truth of the allegations contained in paragraphs 2, 3, 4, 5 and 6 of the Crossclaim.
- 2. Denies each and every Allegation contained in paragraphs 7 and 8 of the Crossclaim.
- 3. Admits the allegations of paragraphs 9 and 10 of the Crossclain.

!!HIZEFORE, judgment is demanded dismissing the Crossclain with prajudice and for such other and further rolind on the Court may doom just and proper, together with the costs and disbursements of this action.

7.1 1. . ..

Datad: Lav York, New York November 14, 1973

PAUL .. CURRAN United States Actorney for the Southern District of Now York Accorney for Respondent United States of America

MPD: iw 73-1321

By: S/
MEL P. BARKAN
Assistant United States Attorney
Office and Post Office Address
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 264-6537

TO: BENEDICT GINSBERG, ESQ. 475 Fifth Avenue New York, New York 10017

PAUL, UEISS, RIFKIND, WHARTON & GARRISON 345 Park Avenue
New York, New York 10022

MAAS LEVY FRIEDMAN HIRSCH & STERN 100 Park Avenue New York, New York 10017

CHAPMAN and BURKE 430 Lexington Avenue New York, New York 10017

DANTE J. BARETTO Deputy Sheriff New York County Division 31 Chambers Street New York, New York 10007 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

COMMIN COMSULTANTS, INC.,

MOTICE OF MOTION

:

Petitioner,

73 Civ. 1978 (MIL)

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THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DEMNING MARVEY, SAMUEL A. CULBERTSON, II, AND COWLES COMMUNICATIONS, INC.,

Respondents.

SIRS:

PLEASE TAKE MOTICE, that upon the amound Statement Persuant to Rule 9(g) of the General Rules of the United States District Court for the Southern District of New York and upon all of the papers proviously filed herein by the parties hursto, the undersigned will move this Court at a mation part thereof at 10:00 in the morning of Documber 19, 1973, or as soon themsefter as counsel may be heard, in Room 2903, United States Courthouse, Poley Square, New York, New York, for an order pursuant to Rule 36 of the Pederal Rules of Civil Procedure greating the Respondent,

United States of America, summery judgment as prayed for in its cross-claim and counterclaim herein, and for such other " and further relief as the Court may down just and proper.

Dated: New York, New York

December 7, 1973

Yours, etc.,

PANL J. CURRAN United States Attorney for the Southern District of New York Attorney for Respondent, United States of America.

HEL F. BARKAR
Assistant United States Attorney
Office and Feet Office Address:
United States Courthouse
Feloy Square
How York, New York 10007
Tolophono: (212) 264-6537

TO: BEMEDICT GIMSBERG, ESQ. Attorney for Petitioner 475 Fifth Avenue New York, New York 10017

> PAUL, WEISS, RIPKIND, WMARTON & GARRISON, ESQS. Attorneys for Respondent, The Interpublic Group of Compenies, Inc. 345 Park Avenue New York, New York 10022

MASS, LEVY, PRIEDMAN, MIRSCH & STRIM, ESQS. Attorneys for Respondent Samuel A. Colbertson, II 100 Park Avenue New York, New York 10017

CHAPMAN & BURER, ESQS.
Attorneys for Respondent Cowles Communications, Inc.
420 Lexington Avenue
New York, New York 10017

GOODSUE & LANE, ESQS.
Attorneys for Respondents Peter H. Hoffitt
and W. Denning Hervey
61 Smith Lane
Hount Kisco, New York 10549

UNITED STATES BESTRICT COURT SOUTHERN BESTRICT OF NEW YORK

..........

COMMIN COMSULTANTS, INC.,

STATEMENT PORSUANT

Petitioner,

70 MLL 9(c)

:

-coalnot-

: 73 Civ. 1978 (ML)

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOPPITY, W. DEMNING MARVEY, SAMPEL A. CULBERTSON, II, and CONLES COMMUNICATIONS, INC.,

Respondency.

The defendant, United States of America, by its atterney, Paul J. Carron, United States Atterney for the Southern District of New York, for its statement pursuant to Dule 9(g) of the General Dules of the United States District Court for the Southern District of New York, states that there is no issue to be tried as to the following unterial facto:

I. On or about Pobruszy 1, 1968, Marion Merper, Jr., and The Interpublic Group of Companies, Inc. (Interpublic) entered into an agreement whoreby Marper severed all connection with Interpublic or any of its subsidiaries. As part of the agreement Interpublic bought back all shares of Interpublic stack sened by Marper. Interpublic also agreed to pay Marper in the following manner for Marper releasing Interpublic from and terminating his employment contract with Interpublic:

B

Rule 9(g)

"Marper (or his heirs or assigns)
shall be paid by the Company monthly
on the fifteenth of every month
beginning February, 1968 for the
calendar year 1968, the sam of
\$20,430 and for the next minetysix menths the sam of \$8,333, ascept that if Marper shall die at any
time prior to Jamesy 1, 1969, so
payment shall be made for Jamesy 15,
1969 or any menth thereafter but
\$100,000 shall be paid to his estate
or as he shall by will direct in
squal monthly installments for sixty
conthe commencing with the first day
of the month following the month in
which he died. If Marper should die
on or after Jamesy 1, 1969 but prior
to Beamber 31, 1975, no further
menthly payment shall be unde except
that \$100,000 shall be paid in like
installments to his estate or as he
shall by will direct. If Marper
should die on or after Jamesy 1, 1969,
the payments that usuid have been unde
to Marper if he had lived shall be paid
in like installments to his estate or as
he shall by will direct."

As part of the contract, Harper also agreed not to compete with Interpublic and not to reveal any trade secrets. A copy of the Contract is summed hereto as Exhibit A.

- Interpublic is a corporation having its principal piace of business within the County, State and Southern District of New York.
- 3. The parties to this learnit, solds from Interpublic, are all creditors of Herper. They seek a determination of the lies priorities on the installments which have become des and swing to Herper (\$175,000 as of Hovenber 16, 1973) and those which will in the future become des and swing to Herper pursuant to the aforesaid contract.

- 4. The United States, by a delegate of the Secretary of the Transury, daily assessed and demanded payment from the tempoyer Harper on Hovember 28, 1969 for 1968 income tex in the assunt of \$403,385.84. A copy of the Certified Transcript of Harper's 1968 account with the Internal Revenue Service is assessed hereto as Exhibit B.
- 5. Notice of the federal tex lies for this lisbility was filed on April 15, 1970, with the County Clark of Westabester County, New York, the county in which Herper resided. A copy of the metics bearing the date and time stamp of the Westchester County Clark is assessed hereto as Exhibit C.
- 6. Meticos) of the some federal tex lies for Herper's 1968 income tex liability (were) filed with the (County Clerk of Westchester County and the Register of the City of New York on January 12, 1971, this time in the principal amount of \$373,730.50, which reflected part payments of the original assessment. Copies of the aforesaid Notices) which bears the date and time stamps) of the Westchester County Clerk and the New York City Register (ere annexted hereto as Emilias D) and E (mapactively) Statutory additions to January 12, 1971, assumted to \$23,193.15, making Harper's total 1968 tem limbility them due \$396,923.65. Harper resided in either New York or Westchester counties or both on that date, On or about Jamesry 12, 1971, Interpublic was given notice of the soid tax lient by a Notice of Lavy from the Internal Revenue Service. A copy of that Notice of Levy is assessed berete as Embibit F.

- 7. Additionally, Harper became indebted to the United States for 1963, 1964 and 1965 income taxes in the total amount of \$168,895.90 plus statutory additions which were duly assessed and demanded by a delegate of the Secretary of the Treasury on September 29, 1973. Copies of the Certified Transcripts of Herper's account with the Internal Revenue Service for those years are annexed herete respectively as Exhibits G, H and I.
- 8. Notice of federal tex lies for said liabilities was filed on October 3, 1972, with the Register of the City of New York (at 10:32 A.M.). Herper resided in New York County at the time. A copy of the aforesaid Notice bearing the date and time stamp of the Register of the City of New York is annamed hereto as Exhibit J. A Notice of Levy, a copy of which is annamed hereto as Exhibit K, was served on Interpublic on October 3, 1973.
- 9. On October 18, 1973, Interpublic received a final demand for payment of the aforesaid tax liens. A copy of the final demand is amound hereto as Exhibit L.
- 10. Harper, as of Hovember 5, 1973, was indebted to the United States for income tex as indicated by Emhibits 5, G, E and I, in the following assumts:

I.	Unpaid Balance	Statutory	Tetal
1968	\$205,347.61	\$57,873.61	\$263,221.22
1963	85,690.08	3,760.67	89,450.75
1964	59,038.81	2,698.43	61,737.24
1965	24,000.77	1,148.25	25.229.02
		TOTAL DUE	\$441,637.73

- 11. There are five judgment creditors of Marper who have been served with process and are parties to this lauguit. They are Peter M. Moffitt, W. Denning Marvey, Corvin Consultants, Inc. (Corvin), Samuel A. Culbertson, II (Culbertson), and Cowles Commenications, Inc. (Cowles).
- 12. Moffitt and Marvey have been paid in full, have defaulted, and the Court need not concern itself with then.
- 13. The other three judgment creditors are listed below in the order in which they obtained their judgments and showing the principal assumes of the judgment as well as the dates on which each delivered execution to the Meriff:

Judgment Creditor	Principal Assent of Julyant	bate of Jedanesi.	Bate Encoution Belivered to Sariff
Corwin	\$52,346.00	May 23, 1972	October 3 , 1972 et 12:51 P.H.
Cowles	56,820.54	Jane 12, 1972	(Nover)
Culbertson	608,180.90	Hovember 30, 1972	Pobsocry 5,1973

Statement of United States of America Pursuant to 88a

14. Caules, on Fourney 28, 1972, prior to obtaining a judgment, caused the Sheriff to serve a writ of attachment on McConn-Erickson, Inc., a wholly-ounced subsidiary of Interpublic.\* Coules reduced its claim to a judgment of \$56,820.54 on June 12, 1972.

15. After February 15, 1972, Interpublic, having received restraining notions from Hoffitt and Harvey, started cumulating the monthly payments due Harper pursuant to the terms of Embibit A pending a determination of the rights of Harper's creditors to that debt. The debt due to Harper as of Hovember 15, 1973, was \$175,400. If Harper remains alive until the last payment becomes due, an additional \$308,000 will be due him. Thus, the total will be \$483,400.

16. Copyin instituted proceedings on November 27, 1972 in the New York State Supreme Court to have the fends perpertedly covered by its essention, which was served on Interpublic on October 4, 1972, terned over to it. On June 5, 1973, the Supreme Court entered a judgment ordering that within 30 days, Corwin shall institute a proceeding personnt to CPLE § 5299 for a determination of priority of liens on Harper's property — naming the United States and the judgment creditors as parties as well as giving Harper notice of the proceedings. The Court also ordered interpublic to set aside in a special occount any sums which may be des Harper until such deposits may satisfy Coswin's judgment.

<sup>\*</sup> Interpublic has approximately 100 subsidiaries,

Statement of United States of America Pursuant to 89a Rule 9(g)

MPB:bj

entry of the judgment referred to in paragraph 16), Corwin commenced the present action to determine the priority of liens pursuant to CPLR § 5239 and in accordance with the terms of the said judgment. A fund of approximately \$60,000 has been set aside by Interpublic in an interest bearing bank account at the First National City Bank, New York, New York.

- 18. The Government removed this action to this Court. All parties having any interest have answered and cross-claimed or counterclaimed. On November 20, 1973, Corwin moved for summary judgment. On December 7, 1973, the Government similarly moved for summary judgment.
- York State Supreme Court for the appointment of a receiver of Harper's assets. It withdrew that motion and by stipulation was permitted to join this action as a party respondent. A copy of Cowles' moving papers in that action are annexed hereto as Exhibit M. Cowles never attempted itself or requested the Sheriff to enforce the levy served on McCann-Erickson, Inc., described in paragraph 14 above.
- 20. Interpublic, without paying any funds into court, has disclaimed any right to the debt owned to Harper which, as of November 15, 1973, totalled \$175,400.

Statement of United States of America Pursuant to

Rule 9(g)

Interpublic acks that it be discharged from any further

Liability to Harper or his creditors upon payment by it

of the claims in order of priority up to an aggregate

amount of \$483,000, or such lesser amount as may be oved

pursuant to the termination agreement.

Deted: New York, New York December 7, 1973

> PANL J. CURRAN United States Attorney for the Southern Mistrict of New York Attorney for the Respondent, United States of America

13

BR. F. BARRAY
Assistant United States Actorney

## TRANSCRIPT OF ACCOUNT

DATE 11-05-73

TRANSCRIPT TYPE SORT DLN

192

CONTROL DLN 132 LOCATION CODES

CURRENT TOA (IF DIFFERENT)

AVE MI HY 10533

EIN-SSN 042-16-1391 PERIOD ENDING 69-12 TYPE OF TAX INCOME FORM FILED

1040 HADD

FREEZE-STATUS CODE

SPOUSE-RRB NO 129-30-7485

		NAME CONTROL	1040 HARP	PRIOR NAM	E CONTROL	TDA (IF DIFF	ERENT)
EXPLANATION	TRANSACTION DATE	OR MEMO ENTRIES	AMOUNT	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER	ADJ CONTROL	NO.
PET FILEN-150 CR YT&FICA-806 ES TX DECL-430 OP CR ELEC-716 FXT FILING-460 EXT FILING-460 EXT FILING-460 EXT FILING-460 EXT FILING-460 MOTICE INT-196 AN TAX ADJ-291 AMEND RET-977 WOTICE INT-194 SCRIP IMD-420 TAX ADJ-290 SURS PAYMT-670 IV SCRIP I-421 FISS PAYMT-670 IV SCRIP I-521 FISS PAYMT-670 IV SCRIP I-570 IV SCRIP I-5	10-15-69  07-07-68  04-15-68  05-14-69  07-03-69  08-25-69  02-13-70  02-13-70  03-06-70  10-02-70  10-06-70  11-12-70  12-28-70  01-15-71  01-19-71  01-26-71  02-26-71	11-28-69 11-28-69 02-13-70 06-05-70	403.385.84 2.923.52- 23.065.86- .00 .00 .00 14.015.37 1.443.10- .00 4.694.75 .00 30.00- 1.000.00- 1.000.00- 1.000.00- 1.000.00- 7.526.58- 1.500.00- 7.036.76- 9.140.08- CONTINUED	6946 6830 6832 6920 6928 6935 6946 7005 7005 7013 7021 7039 7041 7042 7048 7103 7105 7106 7106 7107 7111	13722-298-00269-9  13720-199-50654-8  13211-194-01275-8  13277-130-32097-9  13777-172-11941-9  13777-229-10120-9  13222-298-00269-9  13254-010-20206-0  13254-010-20206-0  13277-065-99999-0  13277-065-99999-0  13218-253-00384-0  13218-253-00384-0  13218-320-00277-0  13218-364-00409-0  13218-019-00105-1  13218-023-00106-1  13213-035-00354-1  13218-061-00456-1	7 0 G 3 X	EXTN D. EXTN D. EXTN D. CNTL NC

DATE 11-05-73

EIN-SSN 042-16-1391

SPOUSE-RRB NO 129-30-7485

CONTROL DLN 13247-26 LOCATION CODES

PERIOD FNDING 68-12 TYPE OF TAX INCOME FORM FILED 1040 NAME CONTROL HARP

FREEZE-STATUS CODE

CURRENT

AMATROM TRANSACTIO		23C DATE		PRIOR NAME CONTROL  ADJ CONTROL NO.				
AMATION	DATE	OR MEMO ENTRIES	AMOUNT	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER	COND.	REM/	
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#### TRANSCRIPT OF ACCOUNT

DATE 11-05-73

TRANSCRIPT TYPE SORT DLN

19299-28

PER JR

EIN-SSN 042-16-1391 PERIOD ENDING

SPOUSE-RRB NO 129-30-7485

CONTROL DLN 13247-26 LOCATION CODES

10533

68-12 TYPE OF TAX INCOME FORM FILED 1040 NAME CONTROL HARP

FREEZE-STATUS CODE

CURRENT

PRIOR NAME CONTROL

TDA (IF DIFFERENT)

NATION	TRANSACTION DATE	23C DATE OR MEMO ENTRIES	AMOUNT	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER	COND.	REM
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FILING-04 NOTICE-21 NOTICE-20 DA REG-22	09-12-69 11-28-69 01-30-70 04-03-70						
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ACCRD INT	11-05-73		57.873.61		"I sertify that the foregoing of the taxpayer named above	in respect to the	sexet e
ACCRD PEN	11-05-73		•00		specified, is a true and con period stated, and all assessment relating thereto as disclosed office as of the date of the	by the records	refunds of this shown
					therein. It also contains a sta or advance payments, if any, in for the period(s) stated." Supervisor Certification Group	1	

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Form 668 REV. 8-671	U. S. TREASURY DEP	SERVICE	or Optional Use By Reco. ting Offic	
TRICT Manha	tten	SE WITHIRS 264-339	10	48421
nue Code, notice is Revenue laws of t (including interest unpoid, and that by legather with penal s lien in favor of tl lng to said taxpayer ME OF TAXPAYER	hereby given that ther he United States again and penalties) which o virtue of the above-men ties, interest, and cost he United States upon a	321, 6322, and 6323 of the have been assessed und not the following-named to after demand for payment stioned statutes the amounts that may accrue in additional statutes the amount of the statutes and rights to payment of the statutes and rights to payment of the statutes and rights to payment of the statutes are statutes and rights to payment of the statutes are statutes and rights to payment of the statutes are statutes and rights are statutes are statutes and rights are statutes and rights are statutes and rights are statutes are statutes and rights are statutes are statutes are statutes and rights are statutes ar	er the Internal axpayer, taxes thereof remain of said taxes, tion thereto, is roperty belong-	FRECE VE LICHA ESTCHESTER COUNTY LICHA BTO APR 15 AM 9: 35
IDENCE	Langdon Avenu Irvington On	Hudson New York,		
CLASS OF TAX ox Return Form No.) (a)	PERIOD ENDED	ASSESSMENT DATE	IDENTIFYING NUMBI	UNPAID BALANCE OF ASSESSMENT (e)
1040	12-31-68	11-28-69	042-16-1391	394,663.48
91.2	69 09	12-05-69	18 64231892008	29.07
	The same of the same of			
ACE OF FILING		County Clerk Land Records White Plains, NY		OTAL 5 394,692.55
TNESS my hand at		. New York, NY, 10		, on th

(NOTE: Cariffic. A shafficer authorized by low to take acknowledgments is not assential to the validity of Notice of Federal Tax Lien G.C.M. 26419, C.B. 1950-Manual).

MUTICE OF TENENAL INT. .... DISTRICT SERIAL NO Manhattan C: 14: PR: GS 254-3390 Pursuant to the provisions of Sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is hereby given that there have been assessed under the Internal Revenue laws of the United States against the following-named taxpayer, taxes (including interest and penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statutes the amount of said taxes, together with penalties, interest, and costs that may accrue in addition thereto, is I a lien in favor of the United States upon all property and rights to property belonging to said taxpayer. NAME OF TAXPAYER Marion Harper Jr. Langdon Ave, Irvington On Hudson, New York, 10533 RESIDENCE and- Waldorf Towers, Park Ave. & 50 St. New York, NY, 10022 UNPAID BALANCE CLASS OF TAX OF ASSESSMENT ASSESSMENT DATE (Tox Return Form No.) PERIOD ENDED IDENTIFYING NUMBER (0) (c) (0) (b) 1040 12-31-68 373,730.50 1-28-69 042-16-1391 1040 12-31-69 11-31-70 042-16-139 91,256.12 PLACE OF FILING To: Register, City of New York New York County 464,986.62 TOTAL 31 Chambers St. New York, NY, 10007 120 Church St. New York, NY, 10007 WITNESS my hand at\_ the 12th day of January SIGNATURE Gerald Snyder: Revenue Officer (NOTE: Certificate of efficer authorized by law to take acknowledgments is not assential to the validity of Notice of Federal Tax Lion G.C.M. 26419, C.B. 1950-51, 125.)

PART 2—To be receipted and returned to the Internal Revenue Service

## UNITED STATES

1971 JAH 128-AH 10: 12

C. Marion Harper Jr. Lengdon Ave. Irvington, New York, 10533 and Waldorf Towers Park Ave. & 50 St. MY. MY. 10022

# NOTICE OF TAX LIEN

	day of
ed TRIS	

Clork (or Registrar).

RM 668 (REV. 8-67)

Mitrict Director of Internal Revenue anhattan District 120 Church St. New York, NY, 10007

### EXCERPTS FROM INTERNAL REVENUE CODE

### SEC. 6321. LIEN FOR TAXES

If any person liable to pay any tax replects or relives to pay the same after deciand, the amount including any injectst, additional amount, addition to tax or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in lawor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

#### SEC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 state at the time the assessment is made and shall continue until the Lability for the amount so assessed in a judgment against the fran-payer arising out no such traditionally it sold-slied or becomes unenforceable by reason of lines of time.

#### SEC. 6323 VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) PURCHASERS HOLDERS OF SECURITY ILTERESTS. MECHARIC'S LIEBCRS. A'ID JUDG'ENT LIES CREDITORS.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest. mechanic's lienor, or judgite t tica creator until natice thereof which neets the requirements of projection of has been fried by the Secretary or his terepate.

(b) PROTECTION FOR CERTAIN STERESTS EVEN THOUGH NOTICE FILED. Fiver though notice of a hen incosed by section 6321 has been tiled such him stall not be valid-

IN PLACE FOR FILING HOTICE: FORM -

1) Place For Filing. - The notice referred to in subsection ial shall be fried -

#### (A' Under State Lars .-

iit Real Property. -In the case of real property, in one office within the State our the county or other covernmental subdivisio , as designated by the laws of such State, in which the property subject to the lien is situated and

(ii) Personal Property—In the case of psicorial property, whether tangible or intangible, in one office within the State for the county, or other governmental subdivision), as designated by the laws of such State in which the property subject to the liens is situated, or

(B) With Clerk ( District Cours. - ". the office of the clerk of the United States district court for the adicial district in which the property subject to the tien is situated, whenever the Sacte has not by law designated one office which seets the requirements of subparagraph (A); or

(C) With Recorder Of Deeds Of The District Of Columbia.-In the office of the Recorder of Deeds of the Dis-trict of Columbia, if the property subject to the hea is situated in the District of Columbia.

(2) Situs Ct Propert, Subject To Lien.-Fur purposes of paragraph :1), property shall be deemed to be situated-

(A) Real Property .- in the case of real property, at its physical location; or

(B) Personal Property. - In the case of personal properly, whether tanginle or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

For purposes of parigraph (2:B), the residence of a cor-poration or partnership shall be deemed to be the place at

The management of the same of

which the principal executive office of the business is focated, and the residence of a taxpayer whose residence is without the United States shall be deemed to be in the District of Columbia.

(3) Form.-The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be valid notwithstanding any other provision of law segarding the form or content of a notice of hen.

## IST REFILING OF NOTICE. - For purposes of this section-

1) GENERAL RULE.-Unless notice of lien is tefiled in the manner prescribed in paragraph 2) during line required refitting period, such notice of lien shall be treated as filed on the date on which it is filed in accordance with subsection if) after the expiration of such ref.ling

12) PLACE FUR FILING.-A noice of hen refiled during the required retiting period shall be effective only-:A) if such notice of lien is refiled in the office

in which the prior cotice of I-en was filed, and " IB. in any case in which, 90 days of rore pilot to the date of a refiting of notice of lien under subparagrach (A), the Secretary or his delegate received written information in the manner prescribed in tegconcerning a change in the taspayer's res dence. It a notice of such tien is also filed in accordance with subsect in if) in the State in which such residence is iscaled.

3 REQUIRED FEFILING PERICO -tr the case of any police of lien, the term "required refining period".

A the one-year perind ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

By the die-car period ending with the expiration of 6 years after the close of the preceding required ref ling period for such notice of lien.

(i) 13) DISCLOSURE OF AMOUNT OF CUTSTANDING LIEN.-If a notice of her has been filed pursuant to setsection (1), the Secretary or his delegate is authorized to provide by regulations the extent to which and the con-ditions under which, information as to the amount of the outstanding obligation secured by the lien may be desclosed.

#### SEC. 6325. RELEASE OF LIEN OR DISCHARGE OF PROPERTY.

(" RELEASE OF LIEN. - Subject to such regulations as the Secretary or his delegate way prescribe, the Secretary or his delegate may issue a certificate of referee of any lien imposed with respect to any internal revenue tax if-

(1) Liability Satisfied or Unenforceable. - The Sec-retary or his delegate linds that the liability for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable:

(2) Bond Accepted, -There is furnished to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed together with all interest in respect theroof within the time prescribed by law fincluding any extension of such time). and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified by such regulations.

DAN 668-A IREV. PED. 1867 U. S. TREASURY DEPARTMENT - INTER-L REVENUE SERVICE

1/12/71

# NOTICE OF LEVY

The Interpublic Group Of Corpanies Inc. 1271 .. venue of the .u.ericas New York, NY

CRIGINATING DISTRICT

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer

TAX FORM NO.	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID PALANCE OF ASSESSMENT	STATUTORY ADDITIONS	\$497, 9-3-33 TOTAL
. <b>04</b> 0	12-31-68	11-28-69	042-16-1391	3/73,720.5	23,197.15	951,923.45
<b>34</b> 0	12-31-69	11-13-70	042-16-1391	91,256.15	5803.56	97,059.fe
				TOTAL AMOL	ÎNT DUE	**************************************

we are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further lified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this spayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxrer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and ized for satisfaction of the aforesaid Tax, together with all additions provided by law, and demand is hereby made upon you the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be plied as a payment on his fax liability. Checks or money orders should be made payable to "Internal Revenue Service".

TITLE Levenue Officer

ADDRESS (CITY AND STATE) 120 Church St. New York, Ny. 1

1. -264-3390/3391

(Name, and Address of Taxpayer)

Marion Harper Jr. Langdon Avenue Irvington, New York, 10533 and Waldorf Towers L Park Avenue & 50 St/ New York, MY, 10022

CERTIFICATY, OF SERVICE

I hereby certify that this levy was served by delivering a copy of this natice of lary to the

PART 1 - TO BE RETURNED TO INTERNAL REVENUE SE

romates - 1 Mar	U. S. TREA Y DE	PARTMENT - INTERNAL REVENU	E SERVICE -	For Optional Use By Recording Office
Pursuant to the pr nue Code, notice is Revenue laws of the (including increst unpoid, and that by tegether with penalt e lien in favor of the ling to said taxpayer	hereby given that the he United States ago and penalties) which virtue of the above-me ties, interest, and cos to United States upon	SERIAL NO.  SERIAL NO.  6321, 6322, and 6323 of the re have been assessed un tinst the following-named after demand for payment intioned statutes the amounts that may accrue in additional all property and rights to property and rights are property and rights and rights are property are property and rights are property are property and rights are property and rights are property are property are property and rights are prope	der the Internal taxpayer, taxes thereof remain t of said texes,	
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ESIDENCE	LANGOOM	NY 10533		
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(including into	erest and	penalties) which al	the following-named in fter demand for payment ioned statutes the amount that may accrue in addi-	of said toxes,	
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- lien in tovo	N 01 1110 C.	ited States upon a	that may accrue in additional property and rights to p		
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	~	VING TON	Lindson, MA	1	UNPAID BALANCE OF ASSESSMENT
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# TRANSCRIPT OF ACCOUNT

DATE 11-05-73

TRANSCRIPT TYPE

SORT DLN

19299-2 \$

CONTROL DLN LOCATION CODES CURRENT

10533

EIN-SSN PERIOD ENDING 63-12 TYPE OF TAX INCOME FORM FILED 1040 NAME CONTROL HARP

FREEZE-STATUS CODE

SPOUSE-RRB NO

	TRANSACTION DATE	23C DATE OR MEMO ENTRIES	AMOUNT	PRIOR NAM		TDA (IF DIFFER	
-150	09-29-72		AMOUNI	CYCLE	TRANSACTION DOCUMENT LOCATOR NUMBER		
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# TRANSCRIPT OF ACCOUNT

DATE 11-05-73

TRANSCRIPT TYPE SORT DLN

COMP 19299-289-0

EIN-SSN 042-16-1391 PERIOD ENDING 64-12 TYPE OF TAX INCOME FORM FILED 1040 NAME CONTROL HARP

SPOUSE-RRB NO

CONTROL DLN LOCATION CODES

13251-273-1

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# TRANSCRIPT OF ACCOUNT

DATE 11-05-73

TRANSCRIPT TYPE SORT DLN

COMF 19299-289-0

PERIOD ENDING 65-12
TYPE OF TAX INCOME
FORM FILED 1040

SPOUSE-RRB NO

CONTROL DLN
LOCATION CODES

13251-273-1

FREEZE-STATUS CODE TG

CURRENT

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NAME CONTROL HARP

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Manhatten		C:27-05	1		
nue Code, notice in Revenue laws of the ing interest and pen that by virtue of the penalties, interest, of	provisions of Sections 632 is hereby given that there by United States against the latties) which after demand above-mentioned statute and costs that may accrue on all property and right	have been assessed un- following-named taxpays for payment thereof rem is the amount of said taxe in addition thereto, is a	der the Internal er, taxes (includ- ain unpaid, and es, together with lien in favor of		
NAME OF TAXPAYER	Marion Harper	Jr.			·:
28	Lane 30 Madison Avenue by York, NY, 1001	6			
KIND OF TAX	TAX PERIOD ENDED	ASSESSMENT DATE	IDENTIFYING (d)	NUMBER	UNPAID BALANCE OF ASSESSMENT (6)
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1040	12-31-65	09-29-72	13 251127312	2002	24,080.77
		•			•\
	Register, City of New York County 31 Chambers Stree New York, NY, 100	t		TOTAL	\$168,895.90
WITNESS my hand at	120 Church S	t. New York, N.Y.	, 10007		on this,
SIGNATURE Ser	Id bryde	TITL P			
(NOTE: Certificate o	f officer outhorized by law.	to take acknowledgments is	not eliminal to the vali	idity of Notice of	Federal Tax Lien G.C.M.

PART 2—To be receipted and returned to the Internal Revenue Service

F 3363

UNITED STATES

.972 CCT 3, AH 10: 32

Marion Harper Jr. 280 Madison Avenue New York, N.Y., 10016

## NOTICE OF TAX LIE!

this.		day o
	, 19, at	

Clerk (or Registrar).

4 668 (REV. 1-70)

Internal Revenue Servica 120 Church St. New York, NY, 10007

#### SECESTS FROM INTERNAL REVENUE CODE

#### SEC. 63:1. LIEN FOR TAXES

If any person liable to pay any las neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, locether with any costs that may accrue in addition thereto, shall be a lies in favor of the United States upon all property and rights to property, whether real or personal beionging to such person

#### SEC. 3322. PERIOD OF LIEN.

Unless another date is specifically fixed by hw. the lien in: "d by section 6321 shall arismat the time the asse, sment is made and shall for tinue until the hability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lause of time.

#### SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) PURCHAGERS, HOLDERS OF SECURITY INTERESTS. MECHANIC'S LIENORS. AND JUDGMENT LIEN CRED-ITORS.—The lien imposed by section 6321 shall not be valid as against any purcha er, holder of a security interest, mechanic's lienor, or judgment lien creator until notice thereof which meets the requirements of subsection if and

been filed by the Secretary or his delegate.
(b) PROTECTION FOR CERTAIN INTERESTS EVEN THOUGH NOTICE FILED -Even though netice of a lien imposed by section 6321 has been filed, such lien shall not be vaid-

(1) PLACE FOR FILING NOTICE: FURM -

(1) Place for Filing - The natice referred to in subsection (a) shall be filed-

(A) Under State Laws .-

(i) Reat Property. the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State in which the property subject to the lien is situated; and

(ii) Personal Property.-in the case of personal property, whether tangible or intanzible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the fich is situated: or

(B) With Clerk Of District Court - In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder Of Deeds Of The District of Columbia. - In the office of the Recorder of Deeds of the District of Columbia, if the prupe ty subject to the lien is situated in the District of Colembia.

(2) Situs Of Property Subject To Lien.-For purposes of paragraph (1), property shall be deemed to be situated-

(A) Real Property - In the c.s: of real property, at its paysical location; or

(B) Personal Property. - in the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is fued. For purposes of paragraph (ZhB, the residence of a corporation or pe territing shad be derna d to be the place at which the grange of executive office of the business & be cated, and the experience of a tarpager whose replaced is without the United States shall be deemed to be in the District of Columbia

(3) Form - The form and centent of the natice referred to in subsection (a) shall be prescribed by the Secretary or his deterate Such notice shall be valid not this anding any other provision of law regarding the form or content of

a notice of hen

(e) REFILING OF NOTICE - For purpose of this section-(1) GENERAL RULE - Unless notice of lies is to filed in the manner prescribed in paragraph (2) during the required refiling period, such notice of hen shall be treated as filed on the dite on which it is filed (in acr dance with subsection (1)) after the expiration of such refung

(2) PLACE FOR FILING .- A notice of lies relied during the required relating period shall be effective only—

(A) it such notice of lien is refiled in the office

in which the prior notice of lien was first and

(B) in any case in which, 90 days or sices prior to the date of a refling of notice of lien under sub-paragraph (A: the Secretary or his delegate received written information (in the manner :: ... bed in ieg ulations is yet by the Secretary or his delocate) con ceraing a change in the trapager's rend are a a chies of such Len is also filed in accordance w in the State in which such residence is . ......

(3) REQUIRED REFILING PERIOD -In In: : :: : any notice of han, the term "required refiling and ad

mean.

(A) the one year period enting 30 days after the expiration of 5 years after the date of the ers atment of the tax, and

(B) the one year period ending with the expiration of 6 years after the close of the preceding regared

refiling period for such notice of tien

(i) (3) DISCLOSURE OF AMOUNT OF CUTSTANDING LIEN.-It a notice of Len has been filed pur ant to sub section (f), the Secretary or his delegate is authorized to provide by regulations the extent to whiche and the con-ditions under which information as to the amount of the outstanding obligation secured by the ben may be dis

#### SEC. 6325. RELEASE OF UEN OR DISCHARGE OF PROPERTY.

(a) RELEASE OF LIEN -Subject to such remaintens as the Secretary or his delegate may presu be the Secretary or his delegate may issue a certificate of release of any tien imposed with respect to any internal revenue tax if-

(1) Liability Schooled or Unenforceable -The See retary or his delegate finds that the hability for the amount assessed, together with all interest in respect thereof has been fully satisfied or has become legally unenfarceable:

(2) Bond Accepted -There is turnished to the Sec relary or his delerate and accepted by him a bond that is conditioned upon the payment of the amount assessed to gether with all interest in respect thereof, within the time prescribed by law (including any extension of such time). and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties

thereon, as may be specified by such regulations.

PORM 668-A

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

19/3,72

# NOTICE OF LEVY

The Interpublic from of Committee Inc.

70 1271 Avenue of the Americas Yes Hork, N.Y., 10019



ORIGINATING DISTRICT

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of

TAX FORM	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	UNPAID . BALANCE OF ASSESSMENT	STATUTORY	TOTAL
101.5 101.0	12-31-58 12-31-63 12-31-65 12-31-65	13-2'-60 C9-39-72 O9-20-72 O9-20-72	01.2-1/-1391 1325127312000 1325127312001 1325127312002	1,00,296.30 65,690.00 50,031.31 21,000.77	1 1.55	*21,6,577.70 85,737.73 50,761.73 21,776.75
						••
				TOTAL AMOU	JNT DUE	\$413,482.90

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment on his fax liability. Checks or money orders should be made payable to "Internal Revenue Service".

Genald Snyder Levenue Officer 1.20 Church St. Her Tork, 17,10007

(Name and Address of Taxpayer)

"arion Harrer Jr.
c/c Lane-280 Fadison Arc. New Lork, IN, 1901
and
1501 N.T. 20th St.
Oklahora City, Chla.,73106

CERTIFICATE OF SERVICE .

I hereby certify that this lesy was served by delivering a copy of this notice of levy to the person named below.

ASSUTANT SECKETURY
DATE AND TIME

SIGNATURE OF REVENUE OFFICES

PART 1 - TO BE RETURNED TO INTERNAL REVENUE SERVICE

PORM 668-A (NEV) 2-07

FORM 668-C

EXHIBIT L - FINAL DEMAND

U. S. TREASURY DEPARTMENT - INTERN. LEVENUE SERVICE

			FINAL D	EMAND		
	Mantattai.		10-	30-72		• • • • • • • • •
ro:	The Interpublic	the Americas	anins Inc. New York, N.	Y , 10019		
On_	October 19th		72 1		San Aon a levy ephilip	
win A.				1611 110011	20 + 100 1	
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redit of	a belonging to, or	owned by lin	rit: France T	r		
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and which	h amounted at that tim	e to the sum of S &	15.048.27	r		
		or such lesser sum o	s you may have b	een indebted	to the taxpayer, which d	em.cunt set .
not been	met.				and compayer, which is	edita nas
Your	attention is invited to	the provisions of s	action 6222 Inman	- I D		
EC 635	CI 155 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5				ode, as follows:  (or obligated with respect to y or his delegate, surrender s	
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s you ma	y have been indebted	to the taxpaver at	the time the notice	vy, S	or for such!	esser sum
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	e statute apoted above	trivaerreed by Aon o	ind proceedings ma	y be institute	d by the United States of	as author-
SNATURE	Gerald Snyder	TITLE POVEN	re Cificer	ADDRES	(City and State)	
				120 0	hurch St. New York	c. NV 100
	•	CERTI	FICATE OF SERVICE			
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PORM 668-A

DEPARTMENT OF THE TREASURY - INTERNAL REVENUE SERVICE

DATE

TO

10-1:-72

# NOTICE OF LEVY

The later ablid broar office whise hic. 12/1 avenue of the hericas how con, ..., 10019



ORIGINATING DISTRICT

You are hereby notified that there is now due, owing and unpaid to the United States of America from the taxpayer whose name appears below the sum of

TAX FORM	PERIOD ENDED	DATE OF ASSESSMENT	IDENTIFYING NO.	BALANCE OF	STATUTORY	أنه باقر وريار ١
1040 1040 1040 1040	12-31-03 12-31-03 12-31-04 11-31-03	09-2, -12	0., -10-13 1 1325127312000 1325127312002	ASSESSMENT  (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	546.09 3 4.00	100,200.17 100,200.17 200,200.17 200,200.17 200,200.17

You are further notified that demand has been made for the amount set forth herein upon the taxpayer who has neglected or refused to pay, and that such amount is still due, owing, and unpaid from this taxpayer. Accordingly, you are further notified that all property, rights to property, moneys, credits, and bank deposits now in your possession and belonging to this taxpayer (or with respect to which you are obligated) and all sums of money or other obligations owing from you to this taxpayer, or on which there is a lien provided under Chapter 64, Internal Revenue Code of 1954, are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions provided by law, and demand is hereby made upon you for the amount necessary to satisfy the liability set forth herein, or for such lesser sum as you may be indebted to him, to be applied as a payment of his tax liability. Checks or money orders should be made payable to "Internal Revenue Service".

TOTAL AMOUNT DUE

SHEPCH DT. 188 CM., ..., 10.0

CERTIFICATE OF SERVICE

(Name and Address of Taxpayer)

c/c lane 200 mainson ave. How tork, TD, 1010 and c/c leter dotz
la brique, 1100 rond, interrend

I hereby certify that this levy was served by delivering a copy of this notice of levy to the person named below.

ASSISTANT SECRETARY
DATE AND TIME

OCT 18, 1972 11, 22 Am

PART 1 - TO BE RETURNED TO INTERNAL REVENUE SERVICE

FORM 668-A .--

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK

COWLES COMMUNICATIONS, INC.,

Petitioner,

NOTICE OF MOTION FOR THE APPOINT-

MENT OF A RECEIVER

- against -

MARION HARPER ASSOCIATES, INC. and MARION HARPER, JR.,

Index No. 2678/197?

Respondents.

PLEASE TAKE NOTICE that upon the annexed affidavit of EDGAR H.A. CHAPMAN, duly verified the both day of August, 1973, and upon all other pleadings and proceedings heretofore had herein, the Petitioner (the "judgment creditor") will move this Court at a Special Term, Part I thereof, to be held in the Court House located at 60 Centre Street, Borough of Manhattan, City and State of New York, on the Ath day of August, 1973, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order pursuant to Section 5228 of the C P I. & R, appointing a receiver, who shall be authorized to administer, collect or sell any real or personal property in which the Respondents (the "judgment debtors") have an interest, or to do any other acts designed to satisfy the judgments, and for such other and further relief as this Court may deem fit and proper under the circumstances.

# Exhibit M - Cowles Moving Papers PLEASE TAKE FURTHER NOTICE that pursuant to the

applicable rules of the CPL&R, answering affidavits must be served five (5) days before the return date of this motion.

Dated: New York, New York August 2, 1973.

Yours, etc.,

CHAPMAN & BURKE
Attorneys for Petitioner
Office & P. O. Address
420 Lexington Avenue
New York, N.Y. 10017
Tel. No. (212) 679-1175

TO: BENEDICT GINSBERG
Attorney for CORWIN CONSULTANTS, INC.
475 Fifth Avenue
New York, N.Y. 10017

DEBEVOISE, PLIMPTON, LYONS & GATES
Actorneys for THE INTERPUBLIC GROUP OF COMPANIES, INC.
and McCANN-ERICKSON, INC.
299 Park Avenue
New York, N.Y. 10017

WHITNEY NORTH SEYMOUR, JR.
Attorney for UNITED STATES OF AMERICA
United States Court House
Foley Square
New York, N.Y. 10007

SHERIFF OF THE CITY OF NEW YORK County of New York 31 Chambers Street New York, N.Y. 10007

MARION HARPER, JR.
c/o Notz
La Crique, Gland,
Canton of Vaud, Switzerland

MARION HARPER ASSOCIATES, INC. 280 Madison Avenue New York, N.Y. 10016 TO: GOODHUE & LANGE
Attorneys for PETER M. MOFFITT
and W. DENNING HARVEY
61 Smith Avenue
Mount Kisco, N.Y. 10549

MAASS, LEVY, FRIEDMAN, HIRSCH & STERN Attorneys for SAMUEL A. CULBERTSON, II 100 Park Avenue New York, N.Y. 10017

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NEW YORK	
COWLES COMMUNICATIONS, INC.,	: :
Petitioner,	: AFFIDAVIT
- against -	:
MARION HARPER ASSOCIATES, INC. and MARION HARPER, JR.,	: Index No. 2678/1977
Respondents.	:
	x
STATE OF NEW YORK )	

EDGAR H.A. CHAPMAN, having been duly sworn, deposes and says:

COUNTY OF NEW YORK

That he is a member of the firm of Chapman & Burke, the attorneys for the Petitioner, and as such is familiar with the pleadings and proceedings had herein.

The present affidavit is made in support of the annexed motion for an Order appointing a receiver of the real and personal property belonging to the Respondents MARION HARPER ASSOCIATES, INC. and MARION HARPER, JR.

The Respondents named above, other than the Respondents MARION HARPER ASSOCIATES, INC. and MARION HARPER, JR., are parties who have obtained judgments against the Respondents MARION HARPER ASSOCIATES, INC. and/or MARION HARPER, JR., and/or those who have exercised tax liens.

That the Petitioner COWLES COMMUNICATIONS, INC., did obtain a judgment against the Respondents MARION HARPER ASSOCIATES, INC. and MARION HARPER, JR., in the sum of \$56,820.54, which judgment was duly entered in the office of the Clerk of the County of New York on June 12, 1972. The judgment is predicated upon two (2) promissory notes totaling \$45,000.00, which notes were signed by MARION HARPER ASSOCIATES, INC. and payment was guaranteed thereon by MARION HARPER, JR.

That an action was commenced in the Supreme Court,

County of New York, on behalf of the Respondent Corwin Consultants.

Inc., and judgment was duly entered thereon on May 23, 1972, in
the sum of \$52,346.00.

That on or about the 3rd day of October, 1972, the execution was issued out of the Supreme Court, County of New York, on said judgment to the Sheriff of the County of New York. That pursuant to said execution, the Sheriff of the County of New York, did, on the 4th day of October, 1972, levy upon a debt in the sum of \$58,333.31 due and owing from The Interpublic Group of Companies, Inc., to MARION HARPER, JR., pursuant to a contract which provides for the payment of \$100,000.00 a year to said MARION MARPER, JR., through the year 1976. The total balance due on the said contract is a sum in excess of \$475,000.00. The sum of \$58,333.31 represents seven (7) monthly payments which had accrued to the date of the service of said execution. We now understand that the amount due and owing under the terms of the contract between the Respondent MARION MARPER, JR., and the Respondent The Interpublic Group of Companies, Inc., is now in

That on or about the 3rd day of October, 1972, the United States of America, by the United States Treasury Department, Internal Revenue Service, issued a final demand to The Interpublic Group of Companies, Inc., requesting a surrender of the sum of \$415,968.27 levied pursuant to a notice of levy served upon The Interpublic Group of Companies, Inc., on October 18, 1972.

That on or about the 14th day of January, 1972, a judgment was entered in the Supreme Court, County of Westchester, between the Respondent MARION HARPER, JR., in favor of the Respondent W. Denning Harvey.

That on or about the 3rd day of February, 1972, a judgment was entered in the Supreme Court, County of New York, against the Respondent MARION HARPER, JR., in favor of the Respondent Peter M. Moffitt.

Thereafter, and on or about the 30th day of November, 1972, a judgment was entered in the Supreme Court, County of New York, against the Respondent MARION HARPER, JR., in favor of the Respondent Samuel A. Culbertson, II.

That the above judgments and levies are wholly unpaid and unsatisfied and there now remains unpaid upon said judgments in favor of the Petitioner the sum of \$56,820.54, plus interest thereon from June 12, 1972.

Section 5228 of the C P L & R reads in part as follows:

"Upon motion of a judgment creditor, upon such notice as the court may require, the court may appoint a receiver who may be authorized to administer, collect, improve, lease, repair or sell any real or personal property in which the judgment debtor has an interest or to do any other acts designed to satisfy the judgment. As far as practicable, the court shall require

and to any other judgment creditors of the judgment debtor."

Due to the numerous judgments filed against the Respondent MARION HARPER, JR., and due to the complexities involved, it is requested that a receiver be appointed to administer the estate on behalf of said Respondent.

The United States of America, through its Internal Revenue Service, has filed numerous liens against MARION HARPER.

JR., which renders as impracticable to handle this matter by any other method except by the appointment of a receiver.

No prior claim for the relief demanded herein has been made to any other Court or Justice thereof.

WHEREFORE, deponent respectfully prays that the Court will appoint a receiver to administer the fund.

S/ Cayon H.A. Chapman-EDGAR H.A. CHAPMAN

Sworn to before me this

day of August, 1973.

NOTARY PUBLIC

ROBERT GRANVILLE BURKE
STOTARY PUBLIC. State of New York
No. 31 - 0501975
Qualified in New York County
Commission Expires March 30, 1969 75

115a

AFFIDAVIT OF CHARLES E. RAMOS IN OPPOSITION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner,

-against-

AFFIDAVIT IN OPPOSITION

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON, II, AND COWLES COMMUNICATIONS, INC.,

73 Civ. 1978 (MEL)

Respondents.

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

CHARLES E. RAMOS, being duly sworn, deposes and says:

I am an attorney at law associated with BENEDICT GINSBERG, the attorney for the petitioner herein and submit this affidavit in opposition to the motion made on behalf of the respondent UNITED STATES OF AMERICA (hereinafter referred to as USA) for summary judgment as prayed for in its crossclaim and counterclaim.

The statement pursuant to Rule 9(g) submitted on behalf of the respondent USA is insufficient to form a basis for granting summary judgment in favor of respondent USA and fails to establish lien priority superior to that of the petitioner.

At page 2 of said statement the respondent USA sets forth a portion of the contract between Harper and the respondent Interpublic. The statement fails to set forth that portion of the contract that describes the conditions upon which Harper will receive the payments therein described. This omission, is significant in light of the inadequate description of those conditions set forth at page 2 and the allegations set forth at page 6 of the statement that "if Harper remains alive until the last payment becomes due, an additional \$308,000 will be due him."

The statement submitted by the respondent USA creates the impression that the only condition separating Harper from the balance of the \$308,000 is his continued existence. Such is not the case.

The following sets forth the various terms and conditions upon which the respondent Interpublic could terminate or limit Harper's rights under the contract.

### "4. Confidential Information: Competition, Etc.

(a) Harper shall in all things keep secret the affairs of the Company and its subsidiaries and shall not at any time hereafter, without the consent of the Company, divulge, furnish or make known or accessible to anyone whomsoever or use for the benefit of anyone (other than the Company) any of the secrets of the Company and its subsidiaries or any information of a confidential nature relating in any way to the clients of the Company and its subsidiaries or to the business

## Affidavit of Charles E. Ramos in Opposition

from time to time carried on or conducted by them. All records, papers or documents kept or made by Harper relating to the business of the Company or its subsidiaries and their clients shall be and remain the property of the Company.

- (b) Without the prior written consent of the Company, Harper will not at any time prior to February 1, 1969 solicit or perform any services whatsoever in respect of business being handled by the Company or any of its subsidiaries for any client of it or any of its subsidiaries on the date of this Agreement. With respect to any such client, 'business handled by the Company or any of its subsidiaries' shall mean (i) in case of a client substantially all of whose advertising is handled by the Company or one or more of its subsidiaries, all business of such client, (ii) in case of a client operating and placing its advertising on a divisional basis, all business of any division substantially all of whose advertising is handled by the Company or one or more of its subsidiaries, (iii) in case of a client for which the Company or one or more of its subsidiaries handles one or some of a number of products or services, only those products or services handled by the Company or one or more of its subsidiaries. However, the foregoing restriction shall not be applicable as to any products or services as to which notice shall have been given to the Company or any of its subsidiaries that the client intends to terminate its relationship with the Company or such subsidiary with respect to such products or services.
- (c) Without the prior written consent of the Company, Harper will not at any time prior to January 1, 1971 take any direct or indirect action or participate in any communication designed to induce any employee of the Company or any of its subsidiaries to leave its employ and become an employee of Harper or of any company of which Harper is an employee, officer, director or stocksholder or of any partnership of which he

is a partner or of any organization with which he is connected. For purposes of this subparagraph, any holding of or option to acquire less than 1% of the outstanding stock of all classes of any company shall be disregarded. The foregoing limitation shall not apply with respect to any employee of the Company or any of its subsidiaries who shall have received notice from the Company or such subsidiary or shall have given notice to the Company or such subsidiary that his employment with the Company or such subsidiary will be terminated.

\* \* \* \* \*

7. <u>Conditions</u>. (a) The obligations of Harper and the Company hereunder are conditioned on the unanimous approval by the Board of Directors of the Company, to be evidenced by resolutions duly adopted of this Agreement <u>and all of the terms and conditions hereof</u>. (Emphasis supplied)"

In addition, the judgment entered June 5, 1973 in the Supreme Court, New York County, which forms the basis of this action (annexed as Exhibit "A" to the original motion papers of the petitioner) provides in the penultimate decretal paragraph that the respondent Interpublic may move for relief in the event that Harper violates the restrictive covenants above described.

The respondent USA now admits that the foregoing conditions apply. The letter dated December 11, 1973 from Mel P. Barkan to the Hon. Morris E. Lasker states:

"...without prejudice to any arguments Interpublic, Harper or any creditor of Harper might make as to the effect on the debt which is the subject of this action of any possible future breach of the contract by Harper."

Affidavit of Charles E. Ramos in Opposition
The statement submitted on behalf of the respondent

USA (at page 2) misstates the purpose of this action. The petitioner does not seek a determination of the lien priorities upon the installments which have become due and owing to Harper, to wit, \$175,000. as of November 16, 1973, but rather a determination of the lien priority to the fund established pursuant to the above-described judgment.

The statement submitted on behalf of the respondent USA discusses at page 4, the Internal Revenue Service assessment made September 29, 1972 (described as September 29, 1973) and the notice of federal tax lien which was filed pursuant to said assessment. Paragraph 8 contains a misstatement of fact, fatal to the claim of the respondent USA. The statement incorrectly alleges: "Harper resided in New York County at the time." (October 3, 1972). The significance of this statement is that the lien has no validity unless notice thereof is filed in the county in which the debtor resides. And, Harper did not reside in New York County at the time.

A copy of the notice of levy, signed by Gerald Snyder, an Internal Revenue Service employee, which is annexed to the respondent's papers as Exhibit "J", identifies the tax-payer as Marion Harper Jr., with his residence c/o Lane, 280 Madison Avenue, New York, New York 10016. I assume that Mr. Barkan's statement as to Harper's residence is based on Mr. Snyder's statement, since no other source is indicated.

Affidavit of Charles E. Ramos in Opposition
The notice of federal tax lien was served together

with a notice of levy upon the respondent Interpublic. The notice of levy also signed by Gerald Snyder sets forth not one, but two, addresses as the residence of the taxpayer, to wit (1) c/o Lane, 280 Madison Avenue, New York, New York 10016, and (2) 1501 N.W. 20th Street, Oklahoma City, Oklahoma 73106. Various other notices of levy and/or notices of federal tax lien given in addition to the two above-described addresses the following three addresses for the taxpayer:

Marion Harper Jr.
Langdon Avenue
Irvington, New York 10533,

c/o ....dorf Towers
Park Avenue & 50th Street
New York, New York
and

Marion Harper Jr. c/o Peter Notz la Crique, 1196 Grand, Switzerland.

Prior to October 3, 1972 your deponent met with the aforesaid Mr. Gerald Snyder, who is the revenue officer of the Internal Revenue Service conducting the investigation of this specific taxpayer, John Jay Philbin, Esq., regional counsel, Internal Revenue Service, North Atlantic Region, and Edwin A. Kiernan, Jr., counsel for the respondent Interpublic, at the office of Mr. Philbin, at 26 Federal Plaza, New York, New York, to discuss our mutual problems regarding the taxpayer, Marion Harper, Jr. At that conference the above-named gentlemen

Affidavit of Charles E. Ramos in Opposition stated to your deponent that they did not know the whereabouts of the taxpayer, Marion Harper Jr.

Subsequent to october 3, 1972, your deponent had a telephone conversation with Mr. Philbin regarding this matter, and he again stated to your deponent that he did not know the whereabouts of the taxpayer, Marion Harper, Jr. We discussed possible business applications that he may have made, but we had no accurate information.

I visited the address, c/o Lane, 280 Madison Avenue, New York, New York 10016, to ascertain whether or not the taxpayer was a resident of the building. I was informed that neither Marion Harper, the taxpayer, nor any person named Lane, was ever a tenant of the building, and that there are no residents of the building.

280 Madison Avenue is a 12-story commercial office building, which is not and never has been the residence of any person. The Department of Buildings of the City of New York, whose certificate of occupancy is required for the use of any building for residence purposes, has never issued a certificate of occupancy for such purpose for 280 Madison Avenue, New York, N. Y., and it was not the residence of the taxpayer on or about October 3, 1972.

The only conclusion that can be drawn from the above is that at the time of the filing of the notice of

Affidavit of Charles E. Ramos in Opposition 122a federal tax lien dated October 3, 1972, the taxpayer certainly did not reside in the City of New York.

At paragraph 9 of page 4 of the respondent's statement the final demand is described as being dated October 18, 1973.

the final demand is described as being dated October 18, 1973.

In fact this is an error; the final demand is dated (as appears at Exhibit "L") October 30, 1972, and speaks of a notice of levy served October 18, 1972 for the sum of \$415,958.27.

The petitioner has no information regarding the tax liability of the taxpayer, and is not in a position to comment upon the reasonableness or legality thereof.

Sworn to before me this

18th day of December, 1973.

CHARLES E. RAMOS

ROSE MAMIOUK
Notary Politic, State of Hew York
110. 01-7090429
Qualified in Hew York County
Commission Expires March 30, 1974

### REPLY AFFIDAVIT OF CHARLES E. RAMOS

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

# OFFICE COPY

-----

CORWIN CONSULTANTS, INC., REPLY AFFIDAVIT

Petitioner,

73 Civ. 1978 (MEL)

-v-

THE INTERPUBLIC GROUP OF COMPANIES, et al.,

Respondents.

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS:

CHARLES E. RAMOS, being duly sworn, deposes and says:

I am an attorney at law associated with BENEDICT GINSBERG, the attorney for the petitioner herein, and submit this reply affidavit in support of petitioner's motion for summary judgment.

This affidavit is submitted in response to the matters raised in the reply affidavit of Mel P. Barkan, dated January 17, 1974, submitted by the respondent United States of America.

The Barkan affidavit at paragraph 9 asserts that if the contract between Harper and Interpublic is in fact conditional, as the petitioner alleges, that the monthly payments would become "after-acquired property" subject to

Reply Affidavit of Charles E. Ramos

the Government's tax lien. Clearly, pursuant to U.S.C.

Title 26, § 6321, the Government's lien attaches to all

property including any property or rights to property acquired

by the taxpayer after the lien arises. However, petitioner's

rights are set forth pursuant to Title 26 § 6323, which pro
vides that a judgment lien creditor is entitled to priority

on the basis of first in time, first in right.

U.S.C. Title 26, §6323(a) "The lien imposed by § 6321 shall not be valid as against any...judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate." (emphasis added).

By reason of the conditional nature of the contract between Harper and Interpublic, as more fully described in the moving papers heretofore filed, the only notice of lien filed by the respondent United States of America of any consequence is the one alleged to have been filed in New York County on October 3, 1972, some two hours and 19 minutes before petitioner delivered its execution to the Sheriff.

The respondent U.S.A. seeks to justify the filing in New York County because New York County "was and is the undisputed situs of the Interpublic debt to Harper" (Barkan affidavit, par. 12). Mr. Barkan thereafter cites 26 U.S.C.

§ 6323(f)(1)(A)(ii) as authority for such a filing, and discounts the clear provisions of 26 b.S.C. § 6323(f)(2)(B), which clearly states that the situs of personal property is "at the residence of the taxpayer at the time the notice of lien is filed". Mr. Barkan suggests the novel view (without supporting authority) that this is merely a convenience for the Government, and that filing is permitted at both places. It is the petitioner's position that the statute is clear and unequivocal, that the only place to file the notice of lien so as to cut off the rights of any subsequent judgment lien creditors is at the residence of the taxpayer, which is where the property is unconditionally deemed to be situated.

Mr. Barkan thereafter goes on to complain about the difficulties in locating the taxpayer, Mr. Harper. I sympathize, having expended no small amount of effort in that pursuit myself. However, the respondent U.S.A. must, as must the petitioner, operate within the law and within that framework, to be the "first in time and first in right".

As a last ditch attempt to salvage its lien position, the respondent U.S.A. asserts, without any foundation whatever, that the taxpayer Harper filled out a hotel reservation card which gave his address as 1501 N.W. 20th Street, Oklahoma City, Oklahoma. The registration card, annexed as Exhibit A to Barkan's affidavit, is undated as to year. The registration

card further indicates that the account was paid for in cash.

Unless the respondent U.S.A. is able to come forward with
some substantial evidence that Harper did in fact reside in
Oklahoma City, Oklahoma, on October 3, 1972, I respectfully
suggest that the Court reject the undated registration card
filled out in the name of M. C. Harper, and signed Marion
Harper, Jr., as totally inadequate to substantiate the respondent's claim that the taxpayer resided in Oklahoma City,
Oklahoma. Considering the resources of the Internal Revenue
Service, the fact that the Court has not been presented with
some affidavit by an investigator as to the veracity of the
claimed residence of the taxpayer Harper compels me to conclude that the Government knows full well that Harper never
resided at such an address.

In view of the foregoing it is respectfully requested that the relief demanded in the petition be granted.

Sworn to before me this	
28th day of January, 1974.	
	CHARLES E RAMOS

STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS:

ROSE MAMLOUK, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years, and resides at New York, N. Y.

That on the 29th day of January, 1974, deponent served the within REPLY AFFIDAVIT upon the following, at the addresses designated by said attorneys for that purpose, by depositing true copies of same enclosed in postpaid properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Post Office Department within the state of New York:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS., Attorneys for Respondent Interpublic Group of Companies, Inc. 345 Park Avenue, New York, N. Y. 10022

PAUL J. CURRAN, ESQ.
United States Attorney
Attorney for Respondent United States of America
United States Courthouse
Foley Square, New York, N. Y. 10007

MAASS LEVY FRIEDMAN HIRSCH & STERN, ESQS. Attorneys for Respondent Samuel A. Culbertson II 100 Park Avenue New York, N. Y. 10017

CHAPMAN & BURKE, ESQS.
Attorneys for Respondent Cowles Communications, Inc.
420 Lexington Avenue
New York, N. Y. 10017

GOODHUE & LANE, ESQS. Attorneys for Respondents Peter M. Moffitt and W. Denning Harvey 61 Smith Avenue, Mt. Kisco, New York.

Sworn	to	be	fore	me	th	is
29th	day	of	Jan	uary		1974.

ROSE MAMLOUK

CHARLES E. RAMOS
Notary Public, State of New York
No. 31-0106850
Qualified in New York County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORVIN CONSULTANTS, INC.,

Petitioner.

: REPLY AFFIDAVIT

: 73 CIV. 1978 (MEL)

THE INTERPUELIC GROUP of COMPANIES, et al.,

Defendent.

County of New York )
State of New York : sa
Southern District of New York )

MEL P. BARKAH, being duly sworn, deposes and says,:

- 1. I am an Assistant United States Attorney in the office of PAUL J. CURRAN, United States Attorney for Southern District of New York. As such, I am in charge or representing the United States of America in this action.
- 2. I submit this affidavit in reply to the papers submitted by the other parties hereto epposing the government's notion for judgment granting it a first priority to the proceeds of a debt owed by The Interpublic Group of Companies, Inc. (Interpublic) to the taxpayer Marion J. Harper, Jr. (Harper).

### As to Interpublic

3. The stakeholder, Interpublic, requests the award of attorneys' fees of approximately \$8,000.
Without commenting upon the reasonableness of such fees, or upon whether such an award might have priority as against the claims of the other creditors of Marien:
Harper, the law is clear that there can be no award of attorneys' fees to a stakeholder until the government's tax liens have been paid in full. United States v. State Mational Each of Connecticut, \$21 P. 2d 519 (2d Cir.1970).

MPB:par n-501 Reply Affidavit of Mel P. Barkan

Texas Oil & Gas Corp. v. United States. 340 P. Supp. 409.

\$11 (W.D. Texas 1971), aff'd, 466 P. 2d 1640 (5th Cir. 1972),

eert. denied, \$10 U.S. 929 (1973); Bank of America National

Trust and Savings Ass'n v. Mamakos, 57 P.R.D. 198, 201

(N.D. Cal.1972). Interpublic acknowledges that there is an

issue as to whether its debt to Harper may be defeated as to

future nayments. If there is such a condition, then it is by

no means certain that the government will be paid in full.

Until the government is paid in full, there can be no attorneys' fees awarded to the stockholder.

4. Additionally, Interpublic has not paid the funds into court pursuant to the 28 U.S.C. \$1335 and Interpublic, who has benefitted from the use of the money presently due, should be liable for the payment of interest for said funds.

### As to Cowles

- apparantly acknowledges that its attachment lapsed unless the instant proceeding can be characterized as one pursuant to CPCR §6214(d). Piret, this contention is an afterthought by Cowles. It did not plead §6214 in its counterclaim and, indeed, did not seek such relief when it belatedly filed a state court action (since discontinued) to appoint a receiver of Harper's assets. A copy of Cowles' discontinued petition is annexed to our moving papers as Exhibit M.
- 6. Second, CPLR 6214(e) states that an attachment does not lapse unless a proceeding pursuant to subdivision (d) "had been commenced" within 90 days. Cowles "commenced" this action by filing its counterclaim more than a year after it obtained the attachment.
- 7. Under such circumstances, it is respectfully submitted that this cannot be considered a proceeding by Cowles pursuant to CPLR 62142(d).

MPB:par n-501 8. Cowles apparently asks for a protective order pursuant to CPLR 5240 to cure an asknowledged defect, that the attackment was never served upon Interpublic, but on one of their 120 subsidiaries. As has been made clear in Cook v. H.R.H. Construction Corp., 32 A.D. 24 806, 302 N.Y.S. 24 364, 366 (2d Dept. 1969) which dealt with a substantially similar fact pattern to the case at bar:

"...[S]estion [5240] was elearly intended to empower the courts to prevent unreasonable annoyance and abuse in the use of article 52 of the CPLR in enforcing judgments (citations emitted). Section 5240 was clearly intended to be the equivalent, in CPLR article 52, of sub-division (a) of CPLR 3103, which empowers the courts to make protective orders with respect to disclosure devises under CPLR article 31. It is not an alternative precedure for achieving priority. (emphasis supplied).

It is respectfully submitted that at this late date (or at any time) Cowles may not be permitted to misuse section 5240 in an effort to achieve priority.

As to Corvin

9. The petitioner, Corwin Consultants, Inc. (Corwin), states that since the debt oved by Interpublic to Harper may be conditioned upon some performence by Rarper of a non-competition clause, the government's tax lien is not good against such property. The answer is simply that such a consideration is irrelevant. If the contract is not conditional, all concede that the proceeds must come to the government. If the contract is conditional, immediately upon the fulfillment of the condition, the monthly payments immediately become "after-acquired property" fully subject to the government's perfected and prior tax liens. See the cases cited pages 9-10 of our Acmorandum of Law which have not and sannet be distinguished by Corwin or Cowles. In either event, the prior tax liens have priority ever the other parties.

- 10. Corwin attempts to raise a second issue as to Harper's residence. This too becomes an irrelevant issue.
- 11. There is no dispute that Harper was a resident of Irvington on the Hudson, Westehester, on April 15, 1970, when the Motice of Harper's 1968 tax lien was filed with the Wetchester County Clerk. Harper still owes \$263,221.22 plus interest on that assessment. Notice of Lien was also filed for 1968 taxes in New York County, the undisputed situs of Interpublie's debt, on January 12, 1971.

  Thus, under no theory is the government's priority in doubt as to its lien for 1968 taxes.
- 12. As to 1963, 1964 and 1965 taxes presently totalling approximately \$176,417.01 owed by Harper, these were assessed by the Secretary of the Treasury on September 29, 1971, 16 and the first Notice of Lion filed in New York County on October 3, 1972, exactly 2 hours and 19 minutes before Corwin delivered an execution to the Sheriff.

  How York County was and is the undisputed situs of the Interpublic debt to Harper.
- 13. 26 U.S.C. § 6323(f)(1)(A)(11) permits filing in the place where "the property subject to the lien is altuated."
- 14. 26 U.S.C. § 6323(f)(2)(k) permits the Internal Revenue Service to "deem" personal property to be situated in the place where the taxpayer resides. The purpose of that section is to facilitate collection of

Harper's home was sold on or about June 30, 1971, with the government receiving certain proceeds of that sale.

<sup>\*\*</sup> Paragraph 7 of the government's 9(0) statement states the date as September 29, 1973. We hereby correct it to the year 1972.

MPB:par n-501

Reply Affidavit of Mel P. Barkan taxes because generally it is easier to locate a person's place of residence (or one of his residences) rather than each item of his personal property or to determine his one domicile. One or both of these difficult tasks were necessary under prior law. A secondary purpose was to permit general creditors the best possible opportunity to receive notice of the tax lien. See Senate Report No. 1708, 1966 U.S. Code Cong. & Adm. News 3731-33. Here, where the situs of specific personal property does not have to be "deemed", but is in fact known and undisputed. it is respectfully submitted that the government has done all that is required in perfecting its lien.

- 15. This is especially so since a taxpayer may have more than one residence. In Harper's case, the Internal Revenue Service had several addresses which Herper himself gave as his residence in the period between June 30, 1971 and October 3, 1972. They were "care of" type addresses in New York City, some of which appear in the various papers submitted by the parties. Harper was frequently staying in hotels during that period. He might well be characterised as itinerant. A prior to October 3, 1972, the latest information in the possession of the Internal Revenue Service was obtained by Agent Gerald Snyder. On September 28, 1972, Agent Snyder examined the records of the New York Sheraton Hotel located at 55th Street and 7th Avenue in New York City. He discovered that Harper had stayed at that hotel fromAugust 28, 1972 to September 13. 1972. The hotel's reservation card, a copy of which is attached hereto as Exhibit B, was written in Harper's own hand and signed by him. Harper stated that his residence was 1501 N.W. 20th Street, Oklahoma City, Oklahoma.
- 16. Based upon this information, in addition to filing a Notice of Lien on October 3, 1972 with the New York City Register, the Internal Mevenue Service caused to be filed a Notice of Lien with the County

H78:par n-501

of said Notice of Lion is annexed herete as Exhibit B.

The date and pine stamp of the Oklahoma County Clerk
indicates that it was filed at 11:42 A.M. Since there was
no time difference between Oklahoma and New York on
October 3, 1972, the Oklahoma filing by the Internal
Revenue Service was 1 hour and 9 minutes prior to the
delivery by Corwin of its execution to the Sheriff.

Mr. Heaper, by his our admission recided in either or both New York City or Oklahema City on October 3, 1972. These were Harper's last known recidences. In either event, the government's tex lien is superior to Corvin's judgment lien which was perfected wither 1 hour and 9 minutes (Oklahema) or 2 hours and 19 minutes (New York) later. It is respectfully submitted that the Internal Revenue Service did all that is required of it as against a less dilligent judgment ereditor by filling Setiess of Liens at the taxpaper's last-known residences.

GREEFORE, it is respectfully requested that the government be granted judgment awarding it priority for Harper's 1968 tax limbility and for the Harpers 1963, 1964, and 1965 tax limbilities against the debt eved by Interpublic.

MEL P. MANEAN Assistant United States Attorney

before me this

Svern to before me this 17th day of January, 1974.

Notary Public, State of New York No. 41-2292838 Queens County Term Expires March 30, 1975 EXHIBIT A - SHERATON REGISTRATION CARD ANNEXED TO FOREGOING AFFIDAVIT

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	_	
* * *	4	HOTEL NO FOLIO NO.
	_	REGISTRATION CARD
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1040	12-31-64	09-29-72	13 25127312	2001	59,038.31
1040	12-31-65	09-29-72	13 25127312002		24,080.77
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AND THE RESIDENCE OF THE PROPERTY OF THE PROPE	1 /				

PART 2 To be receipted and returned to the Internal Revenue Service



## ITED STATES

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ORM 668 (REV. 10-71)

## NOTICE OF TAX LIEN

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1	•	_, 19, atm.
		Sec.
		Clerk (or Registrar).
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## EXCERPTS FROM INTERNAL REVENUE CODE

### SEC. 6321. LIEN FOR TAXES

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

## SFC. 6322. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed (or a judgment against the taxpayer arising out of such liability) is satisfied or becomes unenforceable by reason of lapse of time.

### SEC. 6323. VALIDITY AND PRIORITY AGAINST CERTAIN PERSONS.

(a) PURCHASERS, HOLDERS OF SECURITY INTERESTS, MECHANIC'S LIENORS, AND JUDGMENT LIEN CREDITORS.—The lien imposed by section 6321 shall not be valid as against any purchaser, holder of a security interest, mechanic's lienor, or judgment lien creditor until notice thereof which meets the requirements of subsection (f) has

been filed by the Secretary or his delegate.
(b) PROTECTION FOR CERTAIN INTERESTS EVEN THOUGH NOTICE FILED .- Even though notice of a lien imposed by section 6321 has been filed, such lien shall not be valid-

() PLACE FOR FILING NOTICE: FORM .-

(1) Place For Filing.—The notice referred to in sub-section (a) shall be filed.

(A) Under State Laws. -

(i) Real Property.-In the case of real property, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; and

(ii) Personal Property.-In the case of personal property, whether tangible or intangible, in one of fice within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated; or

(B) With Clerk Of District Court. - In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated one office which meets the requirements of subparagraph (A); or

(C) With Recorder Of Deeds Of The District of Columbis. - In the office of the Recorder of Deeds of the Dis-

trict of Columbia, if the property subject to the lien is situated in the District of Columbia.

(2) Situs Of Property Subject To Lien.—For purposes paragraph (1), property shall be deemed to be situated— (A) Real Property. - In the case of real property, at its physical location; or

(B) Personal Property -in the case of personal property, whether tangible or intangible, at the residence of the taspaser at the time the notice of hen in fred. for garitte e' po ... tet Canti tee me san

poration or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a tarpejer arise residence is without the United States shall be deered to be in the District of Columbia.

(3) Form. - The form and content of the notice referred to in subsection (a) shall be prescribed by the Secretary or his delegate. Such notice shall be we's notwithstanding any other provision of law regarding the form or content of

a notice of lien.

(a) REFILING OF NOTICE.—For purpose of this section—
(1) GENERAL RULE.—Unless notice of lien is refiled in the manner prescribed in personsh (2) during the required refiling period, such notice of her shall be treated as filed on the date on which it is Ced (in accordance with subsection (f)) after the expiration of such refiling period.

(2) PLACE FOR FILING .- A notice of lien refiled during the required refiling period shall be effective only-(A) if such notice of lien is refled in the office

in which the prior notice of lien was filed: and (B) in any case in which, 90 days or more prior to the date of a refiling of notice of fien under subperagraph (A), the Secretary or his delegate received written information (in the manne prescribed in regulations issued by the Secretary or his delegate) con-cerning a change in the taxpayer's residence, if a notice of such lien is also filed in accordance with subsection (f) in the State in which such residence is located.

(3) REQUIRED REFILING PERICD.-In the case of any notice of lien, the term "required refiling period"

means-

(A) the one-year period ending 30 days after the expiration of 6 years after the date of the assessment of the tax, and

(B) the one-year period ending with the expiration of 6 years after the close of the greceding required

refiling period for such notice of lies.

(1) (3) DISCLOSURE OF AMOUNT OF OUTSTANDING LIEN.-If a notice of lien has been filed pursuant to subsection (f), the Secretary or his delegate is authorized to provide by regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

#### SEC. 6325. RELEASE OF LIEN CR DISCHARGE OF PROPERTY.

(a) RELEASE OF LIEN.-Subject to such regulations as the Secretary or his delegate may prescribe, the Secretary or his delegate may issue a certificate of release of any lien imposed with respect to any internal revenue tax if-

(1) Liability Satisfied or Unerfaceable. - The Secretary or his delegate finds that the lebility for the amount assessed, together with all interest in respect thereof, has been fully satisfied or has become legally unenforceable;

(2) Bond Accepted -There is family to the Secretary or his delegate and accepted by him a bond that is conditioned upon the payment of the amount assessed together with all interest in respect thereof, within the time prescribed by law (including any extension of such 1 -e). and that is in accordance with such requirements if ling

UMARIN STATES DISTRICT COURT

COMMIN COMMULEAURS, INC.,

Petitioner, : Index No. 73 Civ. 1978 MR.

-equinet-

THE IMPERPUELE GROUP OF COMPANIES, 1 INC., U. S. A., PRIER N. MOFFITT, W. DEMINIS HARVEY, SAMUEL A. CULMERISON II, and COWLES COMME-CAPIONS, INC.,

AMBRICATION APPRIATE

Respondents, :

STAGE OF HEN YORK )

JULE S. STERM, being daily swern, says, that he is a number of the firm of Masse Lovy Friedman Riroch & Stern, the attorneys for the respondent, Samuel A. Culbertson II.

I make this affidavit in apposition to potitioner's motion for museaxy judgment.

Pethioner suggests that the respondent Samuel A. Calbertson II was in default in answering his potition. The fact is that the antter was being adjourned from time to time in the state courts. I had agreed to the adjournments evally through counsel for the Interpublic Group of Companies, Inc. I only later learned that a formal stipulation was filed and that my client was not made a party to the stipulation. Accordingly, under those circumstances the answer that has been served and accepted by all parties

# Answering Affidavit of Joel S. Stern

should not be questioned.

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Jeel S. Stern

Swarn to before me this 30th day of November, 1973.

Motary Public

Notary Public, State of New York
No. 31-433045
Qualified in New York County
Term Expires March 30, 1974

## OPINION OF THE COURT BELOW

UNITED STATES DISTRICT COURT 16, 1974) SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner,

-against-

73 Civ. 1978

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON, II, AND COWLES COMMUNICATIONS, INC.,

MEMORANDUM

Respondents.

## APPEARANCES:

BENEDICT GINSBERG, ESQ. 475 Fifth Avenue New York, New York 10017 Attorney for Petitioner

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, ESQS. 345 Park Avenue New York, New York 10022 Attorneys for Respondent, The Interpublic Group of Companies, Inc.

PAUL J. CURRAN, ESQ. United States Attorney United States Court House Foley Square New York, New York 10007 Attorney for Respondent, United States of America MEL P. BARKAN, ESQ. Assistant United States Attorney

MAAS, LEVY, FRIEDMAN, HIRSCH & STERN, ESQS. 100 Park Avenue New York, New York 10017 Attorneys for Respondent Samuel A. Culbertson, II CHAPMAN & BURKE, ESQS.
420 Lexington Avenue
New York, New York 10017
Attorneys for Respondent Cowles Communications, Inc.

GOODHUE & LANE, ESQS.
61 Smith Lane
Mount Kisco, New York 10549
Attorneys for Respondents Peter M. Moffitt and
W. Denning Harvey

LASKER, D.J.

This is an action in the nature of an interpleader to determine priority among four lienors to a fund of money accumulating under a contract between the debtor, Marion Harper, Jr., and the Interpublic Group of Companies, Inc. ("Interpublic"). Interpublic does not make any claim to the fund except for attorney's fees. Originally brought in state court, the suit was removed to this court by motion of the Internal Revenue Service ("IRS") pursuant to 28 U.S.C. \$\$1441, 1442 and 1444. Three lienors, Corwin Consultants, Inc. ("Corwin"), Cowles Communications, Inc. ("Cowles") and the IRS, move for summary judgment, each claiming that, on the undisputed facts, it is entitled to priority in its claim to the fund. The fourth lienor, Samuel A. Culbertson, II, does not claim priority. Respondents Peter M. Moffitt and W. Denning Harvey have been paid in full and have defaulted in this proceeding.

Į.

The following facts are undisputed. On February 1, 1968, Harper and Interpublic entered into a covenant not to compete under which Harper, Interpublic's founder, would receive certain monthly payments until 1976.

On April 15, 1970, while Harper was a resident

of Irvington, New York, in Westchester County, the IRS filed with the Westchester County Clerk a notice of tax lien for \$394,692.55, which it claimed was the amount of Harper's unpaid 1968 taxes.

On January 12, 1971, the IRS filed a second notice of tax lien with the Registrar of the City of New York for the same unpaid 1968 taxes (which, including statutory 2/additions, then amounted to \$396,923.65). Simultaneously, Interpublic was given notice of this lien by a Notice of Levy from the IRS dated January 12,1971.

On February 28, 1972, Cowles, a creditor of
Harper, obtained from Supreme Court, New York County,
an order of attachment pursuant to N.Y.C.
P.L.R. \$6201(2). The sheriff levied upon McCann,
Erickson, Inc. ("McCann") a wholly-owned subsidiary of
Interpublic, and upon Harper's counsel, Debevoise,
Plimpton, Lyons and Gates, who as Harper's agent, had
been receiving his payments under the agreement with
Interpublic. However, no levy was made upon Interpublic
itself and no property was turned over to the sheriff
by McCann or Debevoise. On June 12, 1972, Cowles reduced
its claim to judgment for \$56,820.54 plus interest, but
never delivered execution of the judgment to the sheriff.
After February 15, 1972, Interpublic accumulated the

monthly payments due Harper pending a determination of the right of Harper's creditors to the money. Some time in the first half of 1972, Harper disappeared, and none of the parties have been able to locate him since then.

On October 3, 1972, at 10:32 A.M., the IRS delivered to the sheriff of New York County a third notice of tax lien in the amount of \$168,895.90 representing Harper's unpaid taxes for 1963, 1964 and 1965 (plus statutory additions) and on the same day served Interpublic with a Notice of Levy. Two hours later, at 12:51 P.M., Corwin delivered an execution to the sheriff, in the amount of \$52,346.00. On May 23, 1972, Corwin obtained a judgment against Harper in Supreme Court, New York County. In accordance with the terms of the judgment, Corwin then instituted a proceeding in state court pursuant to CPLR \$5239 for a determination of priority of lien on Harper's property. The court ordered Interpublic, the stakeholder here, to set aside a fund of \$60,000. for the satisfaction of Corwin's judgment pending the outcome of the \$5239 proceeding, and the IRS removed the proceeding to this court.

On February 5, 1973, Culbertson delivered his execution to the sheriff, in the amount of \$608,180.90.

On the facts described, Corwin contends (1) that the 1970 IRS lien which was filed prior to the accumulation of any funds under Harper's contract with Interpublic fails because as a matter of law a lien cannot attach to contingent rights in percy, such as Harper's rights to payment under his contract with Interpublic; (2) that the 1971 and 1972 IRS liens fail because they were not filed in the debtor's known county of residence and (3) that the present action determines lien priority only as to the \$60,000. fund established by the state court for satisfaction of Corwin's judgment against Harper.

The IRS answers (1) that its 1970 lien is good against the sums subsequently accumulated under the contract because it is after-acquired property to which federal tax liens do attach; (2) that its 1971 and 1972 liens were properly filed and effective to establish its lien priority, and (3) that the present action should determine the disposition not only of the \$60,000. fund established by the state court, but also the funds accumulated and yet to accumulate under the contract subsequent to the date of the state court judgment and subsequent to the final determination of this lawsuit.

The IRS and Corwin argue that Cowles has no

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lien priority because its February 28, 1972 levy lapsed under CPLR §6214(e). Interpublic makes no claim to the fund, but seeks attorney's fees. Culbertson, evidently, simply sits and hopes.

## III.

26 U.S.C. §§6321 and 6323 prescribe the procedure for the perfection of a federal tax lien. §6321 provides:

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person."

A \$6321 lien has priority against judgment creditors if notice has been filed in accordance with \$6323, which provides in relevant part:

- "(a) The lien imposed by section 6321 shall not be valid as against any ... judgment lien creditor until notice thereof which meets the requirements of subsection (f) has been filed by the Secretary or his delegate.
- (f)(1) The notice referred to in subsection (a) shall be filed -
- (A) (ii) In the case of personal property, whether tangible or in-

tangible, in one office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated

\* \* \*

(2) For the purpose of paragraph
(1), property shall be deemed to be situated -

\* \* \*

(B) In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed."

It is undisputed that the IRS notice of lien filed in Westchester in 1970 meets the requirements of the quoted provisions, since Harper was at the time a resident of that county. Consequently, we find the IRS 1970 lien (covering 1968 taxes) has first priority. The parties lock horns, however, on the validity of the 1971 and 1972 IRS liens (the 1971 lien for the same 1968 taxes and the 1972 lien for 1963, 1964 and 1965 taxes). The IRS argues that its filing of the 1971 and 1972 liens at the situs of the debt meets the requirements of \$6323, while Corwin counters that because Harper's actual residence cannot be verified, the filing does not meet the requirements of \$6323(f)(1)(A)(2) and (f)(2)(B). Corwin

argues, in essence, that the IRS can <u>never</u> perfect a tax lien unless it files in the taxpayer's demonstrable county of residence.

There appears to be no authority on the question whether the "substantial compliance" or "due diligence" standard contended for by the IRS satisfies the notice requirements of \$6321-3. We believe that it does, and for the reasons indicated below, find that where (as here) a taxpayer's actual residence cannot be determined, filing in the county of the situs of the debt is sufficient to establish priority of a federal tax lien.

Trust Co., 339 U.S. 306 (1950). There the Court considered what form of notice to beneficiaries of a common trust fund was sufficient to bind non-residents whose addresses were unknown to the trustee, who sought to settle the accounts of the trust. Mullane, like the present case, involved substantial property rights of the persons sought to be notified. The court recognized, however, that there was also a substantial interest of the state in having the means to close trusts with a measure of finality (339 U.S. at 313), and noted that "[a] construction of the Due Process Clause which would place impossible or impractical obstacles in the way

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[of the state interest] could not be justified" (339

U.S. at 313-314). The court's holding (at 314)

that the notice required is "notice reasonably calculated,

under all the circumstances, to apprise interested

parties of the pendency of the action ..." (emphasis

added) guides us here, for the due process clause does

not require the impossible:

"The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, [citations omitted] or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes. (339 U.S. at 315.)

Measured by the standard articulated in Mullane, we find that the 1971 and 1972 IRS filings are constitutionally adequate. The substantiality of the federal government's interests in collecting taxes and in having recourse to a non-paying taxpayer's property are patent. To deprive the government of the right to proceed against the taxpayer's property in any case where his residence is unknown (or he makes himself scarce) would allow tax evasion by the mere disappearance of the taxpayer. The due process clause does not require such a result,

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particularly where (as here) it is reasonable to assume the taxpayer knows he is delinquent in his payments and that some consequences are bound to follow from his delinquency.

Moreover, to invalidate the 1971 and 1972 liens (which, as noted above, were filed at the situs of the debt), while giving priority to the competing Corwin lien, would do violence to the clear policy of \$6323 that tax liens are favored over judgment liens. This policy is clear not only from the language of \$6323 itself, but from the facts that the priority of tax liens arises without requiring the IRS to seek a judgment, that the liens continue even where there is no certain property to which it can attach, and, in the case of personal property, need be filed in only one place (the tax-payer's residence), rather than every place where such property is located.

In view of the evident policy of \$6323 favoring federal tax liens, it strains common sense to hold that the requirement of filing at the place of the taxpayer's residence was intended to make the government's perfection of a lien impossible in any case involving a taxpayer without a verifiable residence. A more reasonable construction of the statute is that personal property

is "deemed" to be at the taxpayer's residence in order to facilitate perfection of a lien on personal property which might be scattered across the country in various banks or brokerage accounts. This construction finds support in the language of \$6321 that a properly filed tax lien shall attach to "all property and rights to property, whether real or personal, belonging to such person." (emphasis added.) Requiring separate filings at the situs of each interest in personal property would, of course, heavily burden the IRS in its efforts to effect such all-embracing liens. Hence the residency provision.

Moreover, although \$6323 does not contemplate a taxpayer without a residence, it explicitly provides that the filing be made in accordance with requirements of the applicable state law, \$6323(f)(l)(A). New York law is applicable here, since New York is Harper's last known residence, as well as the situs of the debt and no party contends the law of any other state is applicable. New York Lien Law, \$240(2) provides in part:

"Notices of liens upon personal property for taxes payable to the United States ... shall be filed in the county within the city of New York or in the town or city where the owner, if a resident of the state, resides at the time the lien arises, and if

not a resident, in the county within the city of New York or in the town or city where the property is at such time." (emphasis added.)

Clearly, New York law, which provides for the contingency involved here, favors our holding here.

Moreover, to find the 1971 and 1972 IRS liens invalid on the ground that filing was not made in Harper's county of residence would in effect impose upon the government a stricter standard of notice than a New York judgment creditor seeking to establish priority. N.Y.C.P.L.R. \$5227, providing for a special proceeding by a judgment creditor against one indebted to a judgment debtor states: "Notice of the proceeding shall ... be served upon the judgment debtor in the same manner as a summons or by registered or certified mail ... " It was pursuant to \$5227 that Corwin obtained an order requiring Interpublic to set aside a \$60,000. fund for satisfaction of its judgment. Although §5227 (like 26 U.S.C. §6323) does not provide for waiver of notice in cases where the debtor's residence is unknown, Corwin itself was permitted to waive notice to Harper in the state court action, see Corwin Consultants, Inc. v. The Interpublic Group of Companies, Index No. 15276/70 (Sup. Ct. N.Y.Co. 1972) (N.Y.L.J. May 23, 1972). See also Dobkin v. Chapman, 21 N.Y.2d 490,/289 N.Y.S. 2d 161, 172

(1968) ("Undeniably, there are situations in which insistence on actual notice, or even on the high probability of actual notice, would be both unfair to plaintiffs and harmful to the public interest.")

In the light of the evident intention of the federal statute, and the New York State lien law, we conclude that the 1970, 1971 and 1972 IRS liens were all effective to establish first priority to the fund accumulating under Harper's contract.

V.

The question remains whether the IRS liens attach to Harper's payments from Interpublic falling due (1) subsequent to the time the liens were filed and (2) subsequent to both the state court judgment and the determination of priorities here. We find that they do.

Harper's right to payment under his contract with Interpublic is, by the terms of the contract, contingent upon his performance of the contract. It is settled that although tax liens do not attach to contingent rights such as Harper's, pre-existing liens do attach as soon as the taxpayer gains a fixed right to property, i.e., in this case, as each monthly payment to Harper becomes due and owing. In Glass City Bank v. United States, 326 U.S. 265, 267 (1945), the IRS obtained a judgment against

the taxpayer, who subsequently performed certain services as the receiver of a bankrupt corporation. court found that the IRS lien attached to the corporation's debt to the taxpayer, and that 26 U.S. §§3670 and 3671 (now [ 6321, 6322) "read together indicate that a continuing lien covers property or rights to property in the delinquent's hands at any time prior to expiration [of the lien]." United States v. Blackett, 220 F.2d 21, 23 (9th Cir. 1951) involved a judgment debtor's liquor license, sold in a judgment sale, to which the IRS made claim based on a prior tax lien. The court rejected the judgment creditor's argument that the license was not property to which a federal tax lien could attach because the sale was contingent on state approval of the purchaser, and held that the IRS lien attached to the proceeds of the sale at the moment the debtor's right to payment came into existence. Home Insurance Co. v. B.B. Rider Corp., 212 F. Supp. 457 (D.C.N.J. 1963) reached a similar result with respect to a fire insurance policy, in holding that a right to payment, to which a lien could attach, came into being when a fire occurred. These cases guide us here. The IRS lien attached to each monthly payment as it became due under Harper's contract with Interpublic. Moreover, the IRS liens can

continue to attach to payments falling due after judgment, until they are satisfied or payments cease under the contract. Beeghly v. Wilson, 152 F. Supp. 726, 737 (N.D.Iowa 1957). Consequently, we find that the 1972 IRS lien may absorb any funds accumulating after the 1970 liens and 1971/(covering the same 1968 taxes) are satisfied.

## VI.

Having determined that the IRS has first priority to the accumulating fund until its liens are satisfied, we turn to Interpublic's request for attorney's fees of \$8,187.30 for work done in connection with this action. Although fees for the stakeholder's counsel do not have priority over a federal tax lien, United States v. R.F. Ball Construction Co./, 355 U.S. 587 (1958), United States v. Liverpool & London & Globe Ins. Co., Ltd., 348 U.S. 215 (1955), they have priority over the claims of judgment creditors provided they satisfy the two standards governing an award of attorney's fees to the stakeholder under Rule 22(1), Federal Rules of Civil Procedure. Pennsylvania Ins. Co. v. Long Island Marine Supply Corp., 229 F. Supp. 186, 188 (S.D.N.Y. 1964); United States v. Henry's Bay View Inn, Inc., 191 F. Supp. 632, 634 (S.D. N.Y. 1960). First, the stakeholder must concede his liability, as Interpublic does; and second, the award

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sought must bear a reasonable relation to the amount of the admitted liability. We find Interpublic's attorney's fees, which are less than 5% of the liability (\$175,000. as of November 15, 1973) are reasonable. See Aetna

Insurance Co. v. Dickler, 100 F. Supp. 875 (S.D.N.Y. 1951);

A/S Kredit Pank v. The Chase Manhattan Bank, 303 F.2d 648

(2d Cir. 1962); Savannah Bank & Trust Co. v. Block, 175

F. Supp. 798, 801-802 (S.D. Ga. 1959), 3A Moore's Federal

Practice, \$22.16[2] (1970 ed.) pp. 3144-3156. Accordingly,
Interpublic takes its attorney's fees after the IRS

liens are satisfied.

### VII.

We turn next to the fray among Corwin, Cowles and Culbertson. We find that Corwin takes after the IRS and Interpublic. Under New York law, a judgment creditor does not obtain a lien merely by obtaining a judgment, or even by serving restraining notices subsequent to the judgment. City of New York v. Pansirer, 23 A.D. 2d 158, 259 N.Y.S.2d 284 (1965); County National Bank v. Inter-County Farm Coop. Association, 317 N.Y.S.2d 790 (1970). A judgment lien is created when execution is delivered to the sheriff. United States v. Pearson, 258 F. Supp. 686 (S.D.N.Y. 1966), C.P.L.R. \$\$5202(a), 5234(b). Corwin delivered an execution to the sheriff on October 3, 1972,

approximately two hours after the IRS filed its 1972 lien; Culbertson delivered an execution on February 5, 1973; and Cowles has never delivered an execution. Accordingly, Corwin, Culbertson and Cowles, respectively, take after Interpublic.

Cowles nevertheless takes the position that it should take after Interpublic on the basis of an order of attachment and levy served by the sheriff upon McCann-Erickson (Interpublic's wholly owned subsidiary) and Harper's counsel, the law firm of Debevoise, Plimpton, Lyons and Gates, on February 28, 1972 - or some eight months before Corwin's execution. We disagree for three reasons. First, although Cowlés' order was effective to establish priority as to any funds held by either McCann or Debevoise for Harper's account, it is undisputed that they held no such funds so there was nothing to which the lien could attach. Second, we find that as a matter of law, Cowles' service on McCann and Debevoise was inadequate to establish a lien on funds held by Interpublic. Although one corporation can of course be the agent of another, Sugarman, Principles of Agency, §27 (2d ed. 1948) agency is not presumed from the mere fact that one corporation is wholly owned by another. Gillis v. Jenkins Petroleum Process Co., 84 F.2d 74,

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79 (9th Cir. 1936); Berkey v. Third Ave. Ry. Co., 244
N.Y. 84, 95, 155 N.E. 58, 61 (1926). Apart from the
flat statement that McCann is wholly owned by Interpublic (which owns some 120 subsidiaries), Cowles
adduces no facts in support of its contention that McCann
acted or should be deemed to have acted as Interpublic's
agent for purposes of establishing a lien on the Harper
fund.

Third, and in our view dispositive, is the fact that even assuming Cowles' lien priority as of February 28, 1972 as to the Harper fund, its priority expired 90 days thereafter. C.P.L.R. \$5234(b) provides that "Where two or more executions or orders of attachment are ... delivered to the same enforcement officer, they shall be satisfied ... in the order in which they were delivered." However, C.P.L.R. 5 214(e) conditions the effectiveness of a lien so established on the action of the creditor: "At the expiration of / days after a levy is made by service of the order of attachment ... the levy shall be void except as to property or debts which the sheriff has taken into his actual custody ... or as to which a proceeding under subdivision (d) [proceeding to compel payment of or delivery] has been commenced." It is undisputed both that the sheriff did

not take into custody any property in the hands of Debevoise or McCann, and that Cowles did not commence a \$6214(d) proceeding to compel payment or delivery within 90 days. In fact, it "commenced" this action by filing a counterclaim over a year after it obtained the levy and order of attachment. Consequently, its levy is void, and it loses any lien priority it might have had on the basis of the February 28, 1972 levy and order.

Cowles contends, nonetheless, that because none of the respondents have pleaded laches, the clear language of §6214(e) should be ignored; that this proceeding be deemed a §6214(d) proceeding in satisfaction of the statutory requirement and that service on McCann and Debevoise be deemed adequate to establish a lien on the Interpublic fund. We are empowered to do this, Cowles claims, pursuant to our broad authority under C.P.L.R \$5240 to "make an order denying, limiting, conditioning, regulating, extending or modifying the use of any enforcement procedure." We decline to do so. It is clear after Cook v. H.R.H. Construction Corp., 32 A.D. 2d 806,/302 N.Y.S. 2d 364, 366 (1969) that \$5240 "is not an alternative procedure for achieving lien priority." Respondents' failure to plead laches is of no consequence, since we are, of course, not permitted to abrogate the

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the statute's clear requirement that a §6214 proceeding must be commenced within 90 days.

### VIII.

If Harper continues to perform his contract with Interpublic until its termination on January 1, 1976, \$483,400. will have accumulated since Interpublic last paid him an installment. The IRS liens cover \$441,637.73 of that sum as of November, 1973. Statutory additions in the interim will increase Harper's tax liability to a sum uncertain at this time. Consequently, it is unlikely that any creditors beyond the IRS and Interpublic will share in the accumulated fund. In any event, however, we declare the priorities of petitioner and the respondents as follows: The IRS to the extent of its assessments, including statutory additions, Interpublic, Corwin, Culbertson and Cowles, respectively.

The IRS' motion for summary judgment is granted.

Corwin's and Cowles' motions for summary judgment are
denied.

Submit order.

Dated: New York, New York
April 12th, 1974.

WORRIS E. LASKER
U.S.D.J.

## **FOOTNOTES**

- 1. If Harper survives and performs his constact with Interpublic until January 1, 1976, \$483,400. with have accumulated in his name since Interpublic last paid him an installment on March 15, 1972. As of the date of this memorandum, \$216,665. had accumulated.
- Statutory additions can enlarge the scope of tax liens.
   In re Parcheon, 166 F. Supp. 724, 726 (D.C. Minn. 1958);
   U.S.C. §6321.
  - 3. See infra section V.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

CORWIN CONSULTANTS, INC.,

Petitioner.

٧.

THE INTERPUBLIC GROUP OF COMPANIES, INC., UNITED STATES OF AMERICA, PETER M. MOFFITT, W. DENNING HARVEY, SAMUEL A. CULBERTSON, II, and COWLES COMMUNICATIONS, INC.,

Respondents.

The Petitioner and the Respondents United States of America and Cowles Communications, Inc. having moved for summary judgment on the ground that no material fact is in dispute, and the Respondent The Interpublic Group of Companies, Inc., having taken no position as to the merits of the action and various counterclaims and crossclaims except insofar as the award of its attorneys' fees is concerned, and the Respondent Samuel A. Culbertson, II having been served with all papers herein but

having made no submissions, and the Respondents Peter M. Moffitt and W. Denning Harvey having defaulted in this action, and the Memorandum opinion of the Court dated April 12, 1974 having been duly filed herein on April 16, 1974, it is

ORDERED AND ADJUDGED, that the Respondent The Interpublic Group of Companies, Inc. (Interpublic) shall pay all installments which have accumulated (including those which have been deposited in account number 3075368 in the name of "Interpublic-Corwin Litigation" at the First National City Bank, 399 Park Avenue, New York, New York) as well as all installments which shall come due and owing to Marion Harper, Jr. (Harper) pursuant to the contract between Harper and Interpublic dated February 1, 1968, to the Respondent United States of America until the taxes for the years 1968, 1963, 1964 and 1965 heretofore assessed against Harper by the Internal Revenue Service, as described in the opinion of Judge Lasker, as well as all statutory additions thereto and interest thereon, shall have been paid in full; and it is further

ORDERED AND ADJUDGED that the Respondent Interpublic shall pay all the installments described above which have accrued to the date hereof (including the proceeds of the bank account described above) to the order of the Treasurer of the United States at the office of the United States Attorney for the Southern District of New York at the expiration of ten (10) days of the entry of the Order and Judgment and that each future installment that shall become due to the United States of America by virtue of this Order and Judgment shall be paid in a like manner within two (2) days of the date on which said installment becomes due; and it is further

ORDERED AND ADJUDGED that after the completion of all payments described above to the United States of America, the Respondent Interpublic shall pay from the next payments which fall due to Harper pursuant to the contract between Harper and Interpublic dated February 1, 1968, the sum of \$8,187.30 to its attorneys, Paul, Weiss, Rifkind, Wharton & Garrison, Esqs., 345 Park Avenue, New York, New York, which sum represents a reason-

able attorneys' fee; and it is further

ORDERED AND ADJUDGED that if after the completion of payments described above to the United States of America and to the attorneys for Interpublic, there still remains any amounts payable to Harper pursuant to the contract between Harper and Interpublic dated February 1, 1968, then the Respondent Interpublic shall pay the parties such amounts as may fall due to Harper in the following order of priority:

- third priority Corwin Consultants, Inc. to the maximum extent of \$52,346.00 plus interest thereon;
- fourth priority Samuel A. Culbertson, II, to the maximum extent of \$608,180.90 plus interest thereon;
- fifth priority Cowles Communications, Inc. to the maximum extent of \$56,820.54 plus interest thereon;

The maximum amounts listed in this paragraph represent principal amounts of judgments against Harper and such maximum amounts shall be reduced by any amounts paid in satisfaction of the judgments against Harper in favor of said parties from sources other than Interpublic; and it is further

ORDERED AND ADJUDGED, that upon the payment by Interpublic of the amounts in the previously described order of priority and upon the fulfillment of its obligations to Harper pursuant to the contract between Harper and Interpublic dated February 1, 1968, the Respondent Interpublic shall be discharged, relieved and absolved of any liability to Harper or to the other parties hereto; and it is further

ORDERED AND ADJUDGED that in no event shall Interpublic be liable to Harper or to the other parties hereto for an amount greater than that which is or will become due and owing to Harper by virtue of the contract
dated February 1, 1968.

Dated: New York, New York May 10, 1974

MORRIS E. LASKER

United States District Judge

JUDGMENT ENTERED MAY 13, 1974

s/ Raymond F. Bungbardt

U.S. COURT OF APPEALS: SECOUND CIRCUIT

CORWIN CONSULTANTS.

XXXX Appellant,

against

U.S.A.,

Appellee.

Indez No.

Affidevit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

I, Victor Ortegá,

being duly suom,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1027 Avenue St. John, Bronx, New York

That on the 3rd day of September

1974 at 100 Carri Park Ave., New York

...

Res Foley Square, New York

deponent served the annoved appellants

upon

Maas, Levy, Friedman, Ha Hirsch, Stern-Appellant attorney for Appellee-Appellant Paul J. Curran-U.S. Attny. -Southern Dist. - Attorney for Appellee

in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Attorney(s)

Swom to before me, this 3rd

day of September

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VICTOR ORTEGA

ROBERT T. BRIN NOTARY PUBLIC, STATE OF NEW YORK NO. 31 - 0418950 QUALIFIED IN NEW YORK COUNTY COMMISSION EXPIRES MARCH 30. 1975